

## Appendix B – Public Response Documents

### Public Response Document 00042

00042

LETTER BY FAX: 307-828-4539

October 10, 2007

Kemmerer RMP EIS  
Attention: Michele Easley  
Bureau of Land Management Kemmerer Field Office  
312 Highway 189 North  
Kemmerer  
WY 83101-9711

**Re: AES SeaWest's comments to Draft Resource Management Plan and Environmental Impact Study for the Kemmerer Field Office Planning Area.**

Dear Michele:

Please find outlined below AES SeaWest's ("AES") comments on the Kemmerer Field Office Resource Management Plan (RMP) & PEIS, specifically as the plan relates to wind energy development on BLM administered lands.

The Kemmerer Field Office Planning Area Draft Resource Management Plan and Environmental Impact Statement outlines four alternative plans that address solutions to planning issues. Of these AES supports Alternative C - Development Focus with a small amount of conservation. AES herewith provides specific comments and suggestions to support Alternative C and would be pleased to work further with the Kemmerer Field Office staff in support of our position.

AES met with members of the BLM Kemmerer field office on August 28<sup>th</sup> to talk about wind energy development plans on land within the RMP. From our meeting we understand that there were three main issues that Kemmerer field office feel are most important, National Historic Trails, habitat protection and scenic view sheds. Our comments relate to specifically how the revised resource management plan should address these issues and we offer mitigation measures to limit the effect that wind energy development will have on these issues.

AES is one of the most experience wind energy developers in the United States and has over 25 years of development and operational experience in all land use areas, from the deserts of Palm Springs to the high elevations of central Wyoming. AES has an impeccable track record of designing and constructing wind farms with high regard and sensitivity to the permitting requirements of both state and federal agencies. Through its well proven approach to environmental and permitting issues, AES believes that designing its projects with suitable mitigation measures and Best Management Practices, the impact of such projects on the natural environment can be kept to acceptable levels. Of the three main areas of concern related to Draft RMP, AES offers the following initial comments and has provided some specific amendments to the text of the RMP below.

AES SeaWest, Inc.  
4542 Ruffner Street, Suite 200  
San Diego, California 92111-2239

[www.aes.com](http://www.aes.com)  
Telephone: 858.268.7909  
Facsimile: 858.277.5721

One under represented effect of wind energy development in the draft RMP is the huge economic benefit that can be realized to the region. The income generated from such development will have direct and long-term benefits to the local population and indirect benefits to the wildlife through greater funding provided to the administering agencies.

Our specific comments to the RMP are as follows.

#### 1st Comment:

##### Chapter 4 P. 177 4.6.2.1 Methods and Assumptions

Methods and assumptions used in this impact analysis include the following:

- Wind-energy development is expected to increase, relating directly to energy prices, national policy involving renewable energy, market demand, and other factors that encourage demand for alternative energy sources.\* Future wind-energy development proposals on BLM-administered lands within the planning area will be subject to the decisions and policy developed in the BLM's Final Programmatic Environmental Impact Statement on Wind-Energy Development on BLM-Administered Lands in the Western United States (BLM 2005b). This Programmatic EIS proposes a wind-energy development program that implements policies and BMPs for ensuring that the impacts of wind energy development on BLM lands are kept to a minimum.

Response: While the Final Programmatic Environmental Impact Statement on Wind-Energy Development on BLM-Administered Lands in the Western United States (BLM 2005b) provides guidance for the management of wind energy development for BLM administered lands, the BLM Record of Decision, Implementation of a Wind Energy Development Program and Associated Land Use Amendments, dated December 2005; also states under Section 4. Management Considerations:

On August 8, 2005, the President signed into law the Energy Policy Act of 2005 (P.L. 109-58). Section 211 of the Act states, "it is the sense of the Congress that the Secretary of the Interior should, before the end of the 10-year Period beginning on the date of enactment of this Act, seek to have approved non-hydropower renewable energy projects located on the public lands with a generation capacity of at least 10,000 megawatts of electricity". At the time of this Decision it also states, "Currently, about 500 megawatts (MW) of installed wind capacity occurs under right-of-way (ROW) authorizations administered by the BLM in accordance with the requirements of the Federal Land Policy Management Act of 1976 (FLPMA)". This highlighted quote underscores the U.S Government's view toward the prioritization of wind energy development. It has been estimated that less than 5 % of federal land is not presently in Wilderness or other non-development designation, is windy enough, and is near enough to electrical transmission to be suitable for wind energy generation. In order to attain 9,500 MW of additional wind energy on federal lands, windy sites such as the Bear River Divide must be considered for wind energy.

#### 2nd Comment

Chapter 1 - Purpose and Need for Action  
1.4.2 Planning Criteria, Page 1-11 and  
Chapter 3.7.1.2 Proposed Special Designations page 3-135

Page 1-11 states:

AES Sea West, Inc. - Comments to Draft Kemmerer RMP

Page 2 of 7

## Appendix B – Public Response Documents

- The BLM will consider current and potential future uses of the public lands through the development of reasonable foreseeable future development and activity scenarios based on historical, existing, and projected levels of use.
- Planning decisions will include the preservation, conservation, and enhancement of cultural, historical, paleontological, and natural components of public land resources, while considering energy development and other activities.

Page 3-135 describes the proposed Bear River Divide Management Area.

Response: Creating a Management Area for Bear River Divide with 12 foot height restrictions specifically precludes wind energy in advance of considering development proposals and the balance between need and impacts that will be determined in a record of decision.

We believe the area for which we've applied in Bear River Divide is suitable and economically feasible for wind energy and should be considered a "reasonably foreseeable future development". The Validated Wyoming Wind Speed Map at 50 meters height prepared by NREL, Northwest Cooperative Development Center, TrueWind Solutions, Bonneville Power Administration, and Northwest S.E.E.D. indicates this area has average wind speeds of 15.7 to 19.0 miles per hour, which is more than necessary for economic feasibility. Consequently, this area should be considered for wind energy. The issues of visual impacts, compatibility of uses and activities, conservation, historical and cultural resources, and biological impacts will be thoroughly explored and addressed in the NEPA process once a specific project is submitted. Therefore, with appropriate mitigation measures, careful siting and NEPA review of a specific proposal, it is reasonable to conclude that wind energy could be an appropriate use at this location.

### 3rd Comment

#### **Chapter 4— Environmental Consequences**

##### **Page 4-158**

Alternative D precludes granting an ROW through these archeological sites: Emigrant Spring/Slate Creek (87 acres), Emigrant Spring/Dempsey (11 acres), Johnston Scout Rock (2 acres), Alfred Coram and Nancy Hill emigrant gravesites (14 acres), Pine Grove emigrant camp (14 acres), Rocky Gap trail landmark (15 acres), and Bear River Divide trail landmark (3 acres). Alternatives A and C do not prohibit ROW's through these sites.

##### **Page 4-158**

Alternative D has the possibility of developing cultural resource management plans for sites eligible for or listed on the NHRP, specifically the Bridger Antelope Trap, Emigrant Spring/Slate Creek, Emigrant Spring/Dempsey, Johnston Scout Rock, Alfred Coram and Nancy Hill emigrant gravesites, Pine Grove emigrant camp, and Rocky Gap trail landmark.

Response: Although several sites are eligible for listing on the NHRP, none on Bear River Divide are suggested. Based on this we contend that wind energy could be more suitable on Bear River Divide than on other areas in the RMP, so it should not be precluded.

### **4<sup>th</sup> Comment**

##### **Page 4-179**

"Alternative D designates and restricts corridors to specific locations. A 1-mile visual corridor is established for specific areas and a 3 mile viewshed is established around specific cultural sites  
AES SeaWest, Inc. - Comments to Draft Kemmerer RMP Page 3 of 7

under Alternative D. The viewshed of specific NHT segments is larger under Alternative D than compared to Alternative A. Under Alternative D, no new wind energy facilities are authorized in the Rock Creek/Tump and Bear River Divide area identified for other management. All of the above restrictions are anticipated to limit the development of wind energy in the planning area more than Alternative A and C, but not to the extent of Alternative B."

**Response:** Presently the site we've applied for on Bear River Divide is designated Visual Management Class IV. Alternative D proposes to change portions to Class II and the remainder to Class III, perhaps mainly due to the traces of the Oregon Trail. Alternative D includes a VRM 3 mile buffer zone, which would render the entire area undevelopable for wind energy. We disagree with these Visual Resource Management Class II and III recommendations for the following reasons:

- a.) There are approximately 430 miles of designated, established National Historic trails in Wyoming. The poorly defined, remote and unmarked 3 acre trace of the Oregon Trail at Bear River Divide is not identified on Oregon Trail websites or maps as a top tier NHT segment.
- b.) An existing large high voltage transmission line traverses this site and runs close to the 3 acre trail segment and there are 3 natural gas plants and associated transmission pipelines located within the viewshed of this trail segment. Presently this trail has limited or no public benefit. Allowing other uses within the area, as encompassed in Alternative C would allow for greater public beneficial use of this trail.
- c.) We submit that wind energy with carefully sited turbines could respect the integrity of this trail, but a 3 mile buffer zone as proposed in Alternative D is overreaching in this non-pristine area, with existing large transmission lines and 3 gas plants in the vicinity.
- d.) It should be considered that development of a wind farm could in fact provide increased public access to this very remote area of the trail.
- e.) AES would submit that as stated above on Page 3-128, that balance will be made in the Final RMP between VRM and the resource objectives of wind energy development. Changing these VRM designations and buffer zones will allow this balancing of objectives to be made.

### 5<sup>th</sup> Comment

#### **Alternative D (Preferred Alternative)**

##### **Chapter 4.6.2.3. Conclusion**

Page 179

Restrictions developed to protect other resource values under alternatives B and D are the most constraining to wind-energy development, while alternatives A and C are the least constraining. However because areas suitable for wind-energy development exceed current demand, it is expected that market demand, rather than BLM policy will be the primary constraint of wind-energy development.

##### **4.6.2.1 Methods and Assumptions**

P. 177

For analysis purposes, the national wind-energy capacity is projected to increase to 48,000 megawatts or more by 2025 (GAO 2004).

AES Sea West, Inc. - Comments to Draft Kemmerer RMP Page 4 of 7

## Appendix B – Public Response Documents

**Response:** AES questions the RMP's conclusion that "areas suitable for wind-energy development exceed current demand". It is commonly known that for a viable wind energy project in Wyoming, average wind speeds must be greater than 16 miles per hour, and proximity to transmission lines that are not congested is required. Several other considerations are also crucial, including avoidance of military low level flight paths, avoidance of FAA radar, environmental concerns, Native American concerns ACECs, and a host of other critical issues. As an example, in the Kemmerer Field office area AES collected wind data from the Boundary Ridge BLM site and it was found to be below minimum requirements for project feasibility. On Dempsey Ridge we have found significant NHT, cultural resources and habitat issues. Throughout the western US, many areas of potential wind energy are off limits due to radar conflicts and military airspace conflicts. In reality, the majority of wind energy sites that have been applied for will not be economically feasible and will not be built. On Page 177 the GAO projects the national wind-energy capacity is projected to increase to 48,000 MW. In order to supply this 400% increase in wind energy many more sites will have to be explored for wind energy feasibility.

### 6<sup>th</sup> Comment

#### **Chapter 3 - Affected Environment Fish and Wildlife Resources Page 3-58**

The planning area encompasses all or part of 18 big game populations or herd units (4 moose, 4 mule deer, 3 pronghorn, and 7 elk). Of these, 4 moose, 2 mule deer, 3 pronghorn, and 3 elk herd units include lands administered by the BLM. Established population size objectives guide management strategies for each big game herd unit. These objectives are established by the WGFD through a public interagency review and input process and are set at a biologically sustainable and socially acceptable level. Much of the information presented below on big game herd units was taken from the WGFD job completion reports (WGFD 2006a, 2006b).

#### **Chapter 3 Mule Deer PS-**

**Mule deer occupy a wide range of habitats and almost all of the BLM-administered surface lands in the planning area constitute summer range for mule deer. Limited use occurs in the area bounded by State Highway 412, U.S. highways 189 and 30, and 1-80.** Population sustainability of mule deer at their objective level depends, in part, on habitat quality, quantity, and availability on public lands. Two mule deer herd units (Wyoming Range and Uinta) occupy approximately 3,930,903 acres in the planning area, of which approximately 1,423,953 acres (36%) are BLM-administered surface lands. The Wyoming Range Herd Unit has shown a downward population trend from an estimated 37,639 mule deer post-season 2000, to an estimated 27,169 mule deer post-season 2005. The population is currently 46-percent below the population objective of 50,000. High mule deer mortality during the winters of 2001- 02, 2003-04, and 2004-05, combined with drought conditions on summer and winter ranges resulting in poor fawn production, have kept this population depressed. In the Uinta Herd Unit, mule deer populations generally are stable. The average post-season population estimate between 2000 and

2004 was 19,580 animals. The 2005 population estimate was 18,536, slightly below the herd unit objective of 20,000 mule deer.

**Response:** Declining big game populations due to drought and changing food supply are directly or indirectly affected by climate change, which wind energy proposes to help counteract. On May 25, 2007, the United States District Court for the Eastern District of California in *Natural Resources Defense Council v. Kempthorne*, No. 05-1207 (E.D. Cal. May 25, 2007) court determined that the biological opinion was unlawful because the Service failed to address the issue of climate change. From this we can see that climate change is an important topic to consider in the NEPA review and that wind energy helps minimize the impacts of climate change. Therefore, we urge BLM to incorporate land use alternative that does not preclude wind energy from Bear River Divide.

A review of these wintering habitat statistics does not indicate that wintering habitat for the proposed Management Area designation for Bear River Divide is of more significance than many other areas, except for mule-deer winter habitat. With appropriate mitigations and calendar restriction on construction wind energy development could occur with minimal impacts to big game. Review of gas and oil construction and operation has shown that while most big game species will experience some displacement during construction, they will readily reclaim their habitat soon after construction is completed.

### 7<sup>th</sup> Comment

#### **Chapter 4 - Big Game Alternatives**

##### *Big Game*

##### *Alternative A*

The seasonal motorized vehicle closure, January 1 to April 30 of big game winter range in the planning area, benefits big game by reducing stress to wintering animals. Alternative A does not identify large contiguous blocks of intact native vegetation in the planning area for protection from habitat fragmentation. Alternative A does not make specific decisions regarding areas suitable for wind-energy development. Alternative A does not have specific management actions addressing the use of certified weed-free seed, mulch, forage, or feeds to reduce the spread of INNS, which could adversely impact big game habitats. Alternative A does not identify specific management for migration corridors which could result in loss of access to winter ranges and lead to not meeting WGFD population objectives for the impacted species. In western Wyoming, migration distances for mule deer and pronghorn are some of the longest recorded, and the identification and protection of migration corridors and bottlenecks may be necessary to maintain these populations (Sawyer et al. 2005). The management actions for Alternative A generally are expected to maintain existing conditions for big game in the planning area.

##### *Chapter 4 - P.4-100*

##### *Big Game*

Alternative C does not implement seasonal restrictions to motorized vehicle use for any big game crucial winter range. Alternative C has the greatest acreage suitable for wind-energy development, potentially disrupting wildlife more than all other alternatives. Although Alternative C does not identify large, contiguous blocks of intact native vegetation to protect from habitat fragmentation as under Alternative B, Alternative C does address and avoid habitat  
AES Sea West, Inc. - Comments to Draft Kemmerer RMP Page 6 of 7

## Appendix B – Public Response Documents

fragmentation more than Alternative A. Alternative C recommends the use of certified weed-free seed, mulch, forage, and feeds to reduce the spread of INNS. In addition, Alternative C identifies and develops management for big game migration and travel corridors and impacts would be slightly greater than those described for Alternative B, as limited disturbance in these areas could occur. Alternative C is anticipated to result in greater beneficial impacts to big game than Alternative A.

Response: Alternative C is the preferred alternative relative to balancing the option to pursue wind energy options with mitigation measures consistent with of Final Programmatic Environmental Impact Statement on Wind-Energy Development on BLM-Administered Lands in the Western United States (BLM 2005b and AES understands the need for continuing the seasonal motorized vehicle closure, January 1 to April 30 of big game winter range in the planning area, but allowing for the servicing of potential wind energy development. Alternative C identifies and develops management for big game migration and travel corridors and impacts would be slightly greater than those described for Alternative B, as limited disturbance in these areas could occur.

### 8<sup>th</sup> Comment

On May 25, 2007, the United States District Court for the Eastern District of California upheld a challenge to the biological opinion issued by the U.S. Fish and Wildlife Service following consultation under section 7 of the Endangered Species Act (ESA) for the Central Valley and State Water Projects. In Natural Resources Defense Council v. Kemphorne, No. 05-1207 (E.D. Cal. May 25, 2007) the court determined that the biological opinion is unlawful because the Service failed to address the issue of climate change. The Kemmerer Draft RMP and EIS does not address the issue of climate change, and therefore may be inadequate.

Thank you for the opportunity to comment.

Sincerely,



Michael Azeka  
Director, Planning and Permitting  
AES Wind Generation

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## Appendix B – Public Response Documents

### Public Response Document 00043

00043

Annette O. France  
PO Box 311  
Lyman, WY 82937

Kemmerer RMP and EIS  
Bureau of Land Management  
Kemmerer Field Office  
312 HWY 189 North  
Kemmerer, WY 831101-9711  
FAX 307-828-4539

October 11, 2007

Dear Ms Easley,

I have spent many hours reviewing the Kemmerer Field Office Draft Resource Management Plan and Environmental Impact Statement. The material covered is overwhelming and thorough given the time allowed for review and comment. I respectfully submit a request for the extension of the public comment period and review. With that in mind I submit what I have noticed in the draft plan.

I have worked in Natural Resource field a few years ago as an educational coordinator for the Uinta County Conservation District. I was involved in water sampling on the Smiths Fork, Blacks Fork and Bear Rivers in Uinta County. I also was involved in writing both watershed management plans accepted by the Department of Environmental Quality. I understand the classification process for wetland evaluations and vegetation growth systems. I feel any additional classification as addressed in the draft on page 3-14 and 3-15 is unnecessary and unjustified when applied to the rivers in Uinta County. I agree that plant diversity is a monitor for water quality however our environment is complex and changing. Your classifications do not allow for such changes. Your classifications place an undo responsibility on private landowners and federal/state agencies to maintain such standards when placed in a variable climate. I challenge your extended process to categorize riparian areas and wetlands along perennial streams. Your strategies should align with DEQ requirements and in no way extend beyond required guidelines.

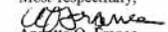
Resource development is an important economic component in Uinta County. Many landowners supplement their household income by seeking employment in this industry. Any extreme, aggressive treatment and suppression of this industry will inadvertently affect the local economy, restrict employment opportunities and will not support our western lifestyle of independence.

Our forests are suffering from lack of management. Beetles kill has over run mature stands of marketable lumber at an alarming rate. Treatment and vegetation improves with chemical and grazing management. Uinta County has lumber and mill businesses frustrated with regulations that waste these valuable resources that would only improve with thinning. Logical minds would recognize this industry would protect their future

livelihood by developing and managing harvested tree allotments. Please work with local lumber industries to manage our forests before fire consumes private and public properties.

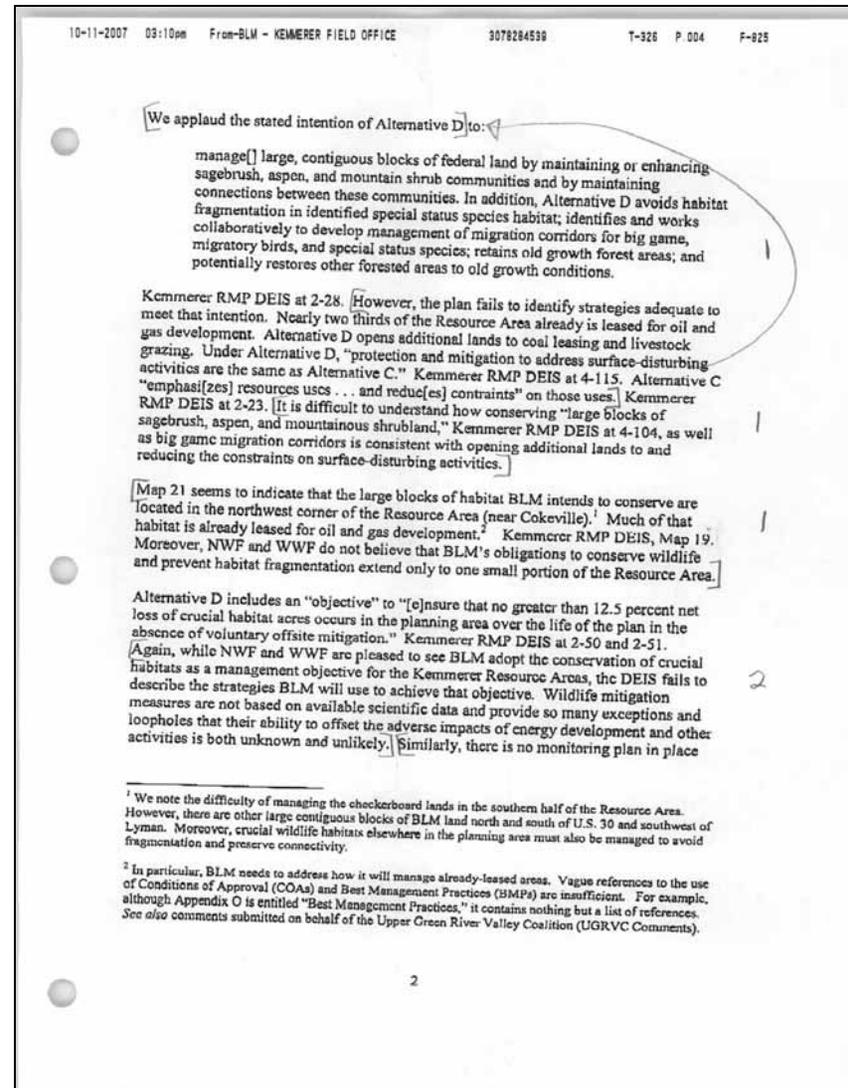
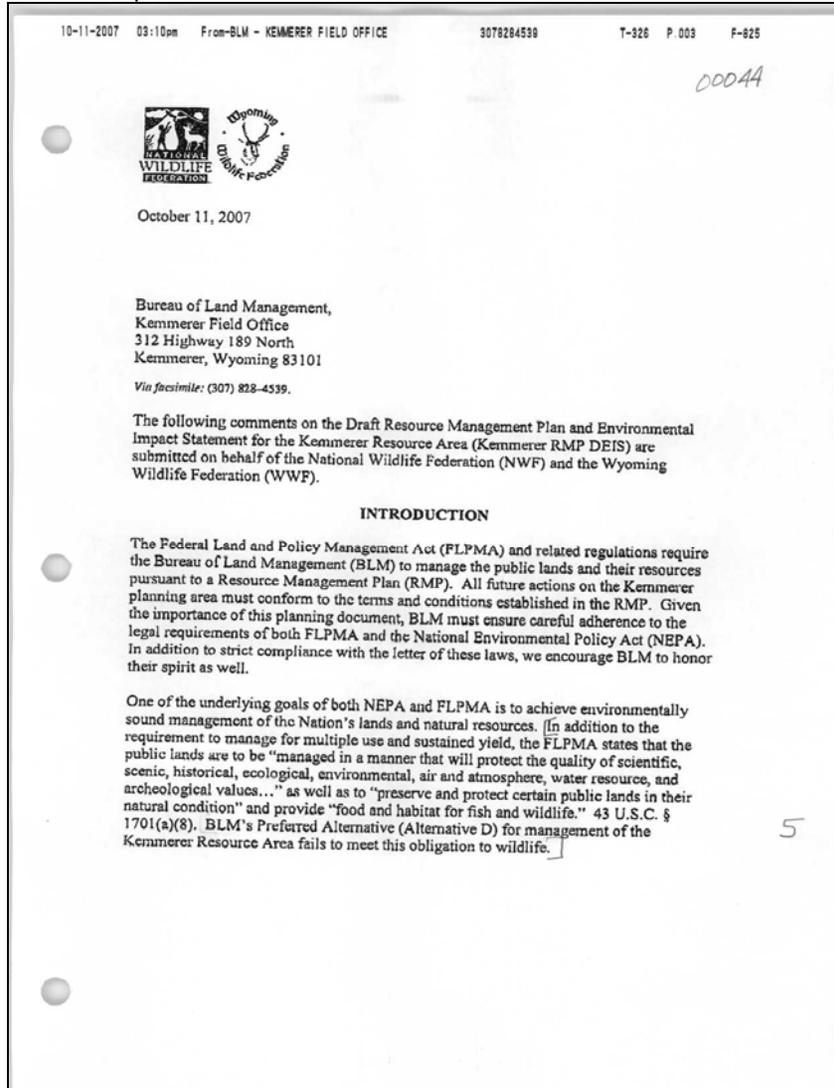
I respect and value our Wyoming heritage. We enjoy historical trails and vast regions of ancient settlements. However, to unreasonably restrict our use of public lands by restricting development and recreational use on either side of historic trails and posting a viewshed, places undo hardship on industry and citizen alike. One would find activity restrictions beyond 1/4 mile on either side of trails and heritage sites ridiculous.

The BLM is a government agency responsible for management of federal lands. My evaluation of the draft Kemmerer RMP and EIS assess policy tempered by extreme environmental attitudes. I respectfully request you allow multiple use development and marginally respect our heritage giving our western lifestyle a future.

Most respectfully,  
  
Annette O. France

Appendix B – Public Response Documents

Public Response Document 00044



**Appendix B – Public Response Documents**

10-11-2007 03:10pm From:BLM - KEMMERER FIELD OFFICE 3078284539 T-326 P.005 F-825

adequate to identify and prevent unacceptable impacts to wildlife resources. Lastly, we do not understand what is meant by "offsite mitigation" in this context.<sup>3</sup> 1

NWF and WWF are concerned that the Preferred Alternative identified in the DEIS could lead to loss and degradation of much of the habitat that provides big game crucial winter habitat and migration routes as well as sage-grouse leks and winter concentration areas. [We note that the official policy of Wyoming's Game and Fish Commission is that habitat functions should be preserved. Furthermore, under the Wyoming Game and Fish Department's guidelines for areas of "vital" habitat, including big game crucial range and sage-grouse leks as well as nest, brooding and winter concentration areas, it is recommended that while some modification of habitat characteristics may occur, there should be no loss of habitat function. Wyoming Game and Fish Department, *Recommendations for Development of Oil & Gas Resources in Crucial & Important Wildlife Habitats* (2004) [WGFD Recommendations] at 9. Maintenance of habitat function is described as maintaining "the arrangement of habitat features, and the capability of those features to sustain species, populations, and diversity of wildlife over time." WGFD Recommendations at 4. NWF and WWF do not believe that BLM's Preferred Alternative for management of the Kemmerer Resource Area is consistent with this goal.<sup>4</sup>] 5

Finally, the Kemmerer RMP DEIS fails to provide the requisite "hard look" at the environmental impacts of each alternative. The discussion of the environmental consequences contained in Chapter 4 of the DEIS consists of little more than a statement that the Preferred Alternative will have greater adverse impacts on environmental values than Alternative B but fewer than Alternative C. This conclusion appears to be based entirely upon the estimates of "surface disturbance" contained in Appendix M.<sup>5</sup> NWF and WWF believe this conclusion is not supported by the analysis contained in the DEIS. 2

Responsible energy development is an important component of public lands management, but it does not trump all other resource values. We urge BLM to consider whether the Preferred Alternative represents an appropriate balance of private consumptive uses with conservation of public resource values. Of the four management alternatives analyzed in the Kemmerer RMP DEIS, Alternative B represents the best attempt to balance the impact of resource extraction with the needs of wildlife. With the 5

<sup>3</sup> For example, does BLM intend to count improvements outside the planning area as compensation for the loss of crucial habitats within the Resource Area? Does the "voluntary offsite mitigation" have to be completed by the same entity seeking to exceed the 12.5 percent cap? How does BLM intend to determine whether the cap has been reached? What counts as the "loss" of crucial habitat?

<sup>4</sup> While the DEIS cites the WGFD Recommendations as a source of information on the impacts of oil and gas development, it fails to incorporate the mitigation measures proposed by WGFD.

<sup>5</sup> We note that Appendix M is nothing more than a table comparing the acreage of surface disturbance attributable to various activities under the four alternatives. With the exception of acreage figures for oil and gas development, see DOI, FINAL Reasonable Foreseeable Development Scenario for Oil and Gas (October 2006) [Kemmerer RFD] at 8-28 to 8-34, there is no explanation of how BLM arrived at the numbers in the table.

3

10-11-2007 03:10pm From:BLM - KEMMERER FIELD OFFICE 3078284539 T-326 P.006 F-825

modifications outlined in the Upper Green River Valley Coalition's comments, NWF and WWF would support Alternative B's approach to management of the Kemmerer Resource Area. Much of the oil and gas reserve produced under BLM's Preferred Alternative could be recovered under Alternative B and wildlife populations might be sustained as well. 5

**SPECIFIC COMMENTS AND QUESTIONS**

1. **The DEIS Fails to Provide Adequate Protection for Wildlife and Wildlife Habitat** 5

Wildlife, specifically mule deer, pronghorn, and sage-grouse, have already been severely harmed by the existing development within southwest Wyoming. For example, a study conducted on the Pinedale Anticline has shown that pronghorn exposed to oil and gas development had only 69.3 percent survival rates while those not exposed to natural gas development had 95 percent survival rates.<sup>6</sup> *Draft Supplemental Environmental Impact Statement for the Pinedale Anticline Oil and Gas Exploration and Development Project* (December 2006) [Pinedale Anticline DSEIS] at 3-108.

According to research by WEST, Inc. (Sawyer *et al.* 2005, Sawyer *et al.* 2006) there is a "consistently declining" mule deer population on crucial winter ranges on the Mesa portion of the Pinedale Anticline. Pinedale Anticline DSEIS at 3-111. There has been a "disconcerting" 46 percent decline in the mule deer abundance on the Pinedale Anticline since natural gas development intensified in about 2000, with no similar decline in the control area not subject to natural gas development. Sawyer *et al.* 2005 at 45. This decline is not explained by the deer simply "moving somewhere else." Evidence shows the deer are not using alternative habitats and they are not emigrating in substantial numbers. *Id.* See also Sawyer *et al.* 2005 at 46 (reduced over-winter fawn survival and lower adult survival coupled with limited emigration likely explain the decline in mule deer abundance); Sawyer *et al.* 2006 at 6-18, 6-20 (same, and "The weight of the evidence suggests the observed deer decline in the treatment area was due primarily to reduced survival rates associated with [natural gas] development activities and secondarily to limited amounts of emigration").<sup>7</sup>

The picture for sage-grouse is no less grim. There is evidence of a long-term declining sage-grouse population and of lek abandonment. Pinedale Anticline DSEIS at 3-115. The number of male birds attending leks that were heavily impacted by natural gas development "declined by 52 percent" from one year prior to well development through

<sup>6</sup> While this difference was not statistically significant, the magnitude of this difference cannot be ignored. It seems likely that if the sample sizes were increased or other experimental design features for the control or assessment of variation were implemented mean differences of this magnitude would almost certainly be deemed very real, that is, statistically significant. A difference in mean values of this magnitude cannot be dismissed just because statistical significance has not been shown yet.

<sup>7</sup> See Comments of A. William Alldredge on the Draft Resource Management Plan and Environmental Impact Statement for the Pinedale Resource Area (Pinedale RMP DEIS) at 4.

4

Appendix B – Public Response Documents

2004. *Id.* at 3-117.<sup>8</sup> The work of Matthew Holloran on the Pinedale Anticline has also shown that existing oil and gas development is causing "yearling females [to] select nesting locations farther from haul roads and active drilling rigs, suggesting the long-term response of nesting females is avoidance of development areas [ ]." *Id.* at 3-118. BLM goes on to acknowledge that "[u]nder all alternatives, effectiveness of greater sage-grouse breeding (leks), nesting, and brood-rearing habitats would continue to decline, as they have through 2006." *Id.* In fact, "it is uncertain if habitats would still provide some function to greater sage-grouse by 2023." *Id.*

The wildlife impacts described above are the result of what BLM describes as the "Resource Protection (RP) Alternative" for oil and gas extraction on the Pinedale Anticline. Development on the Pinedale Anticline was supposed to be a demonstration of how oil and gas production could be completed in a responsible manner that would conserve wildlife and wildlife habitat. In its Record of Decision, BLM promised that it would monitor the wildlife impacts on the Anticline and adapt its management of oil and gas operations accordingly. Despite the growing evidence that wildlife is suffering what may be irreparable losses, BLM's only "adaptive management" response thus far has been to propose authorizing more development on the Anticline. Pinedale Anticline DSEIS.

Based upon the experience on the Pinedale Anticline, the Jonah field, and elsewhere in Wyoming where vital wildlife habitats and oil and gas reserves coincide, NWF and WWF are concerned that BLM's Preferred Alternative for management of the Kemmerer Resource Areas also fails to provide adequate and enforceable measures to conserve healthy populations of wildlife.

A. Big Game

BLM lands in the planning area provide habitat for a variety of big game species, including moose, mule deer, pronghorn, and Rocky Mountain elk. In addition, BLM lands in the planning area provide the majority of crucial winter range for pronghorn, mule deer, and elk populations that occur between the Wyoming and Uinta mountain ranges. Winter is a crucial and stressful time for wild ungulates; therefore, crucial winter range for the most abundant big game species (pronghorn, mule deer, and elk) is often the focus of management and a criterion for analyzing the impacts of resources management on big game. While Alternative D preserves the use of timing stipulations to reduce the stress of oil and gas construction activities, it fails to provide other mitigation measures necessary to conserve crucial winter ranges and other big game habitats.

<sup>8</sup> Citing the work of Matthew Holloran. See Pinedale Anticline DSEIS at 6-7. See also *id.*, at 6-8 (providing citation to another study of sage-grouse on the Pinedale Anticline done by R.C. Kaiser).

1. BLM Failed to Utilize Available Scientific Information

Research also has shown that timing limitations may not be achieving their desired results.<sup>9</sup> Where well densities range from 4-16 pads per section, the number of producing well pads and associated human activity may negate the effectiveness of timing restrictions on drilling activities as a means of mitigation (Sawyer *et al.* 2006).<sup>10</sup> However, BLM has failed to take this important information into account in the Kemmerer RMP DEIS. Instead, the Preferred Alternative focuses on timing limitations in crucial winter range as the primary mitigation measures for big game.<sup>11</sup>

In addition to skepticism that timing limitations alone are sufficient to conserve big game populations once energy development exceeds a certain level, their effectiveness further decreases when exceptions are granted to industry, allowing them to enter and conduct activities on these crucial lands during restricted seasons. Because BLM regularly grants exceptions to winter stipulations, the effectiveness of timing limitations to mitigate impacts from surface disturbing activities is unknown.<sup>12</sup>

2. The Monitoring Strategy Detailed for Big Game in the DEIS is Inadequate

All of the action alternatives in the Kemmerer RMP DEIS fail to provide crucial details on necessary monitoring and enforcement that could ensure the health of the Kemmerer big game populations. Sawyer *et al.*, however, recommended that population parameters (i.e. adult female survival, overwinter fawn survival, recruitment) be monitored so that changes in survival and reproduction can be documented. Sawyer *et al.* 2006.

<sup>9</sup> The Wyoming Game and Fish Department considers anything more than four pads per section in crucial ranges for both mule deer and pronghorn to constitute "high" or "extreme" impacts to these habitats requiring mitigation measures in addition to seasonal restrictions. WYFD Recommendations at 11.

<sup>10</sup> The RFD projects that spacing in the Moxs Arch/Green River Basin geologic area will range from 4 to 8 wells per section. Spacing for coalbed methane production will be 4 to 6 wells per section. Other unconventional gas resources would require 40-acre spacing (8 wells per section). Kemmerer RFD at 7-10 to 7-11.

<sup>11</sup> Elsewhere in the document, BLM states that various other measures or "Best Management Practices" might be employed to conserve wildlife habitats, but there is little information on where or when or even if those measures will be used.

<sup>12</sup> Moreover, timing limitations impose no limit on human disturbances once oil and gas development enters the production phase. This further undermines their effectiveness. See comments of A. William Aldredge, Ph.D. on the Pinedale RMP DEIS. NWF and WWF believe that timing limitations are an important component of wildlife conservation. However, they should be expanded to prevent disturbances to wildlife during other phases of oil and gas development, including production and reclamation. Timing limitations must also be strictly enforced.

Appendix B – Public Response Documents

10-11-2007 03:11pm From:BLM - KEMMERER FIELD OFFICE 3078284539 T-326 P.009/050 F-825

**B. Sage-grouse**

Sage-grouse have declined precipitously rangewide. Declines have been estimated at over 50% in occupied areas and up to 80% decline in bird abundance, with complete extirpation in several states. Wyoming has historically supported larger populations of sage-grouse than any other state because of quality sagebrush habitats (Patterson 1952). Areas in central and western Wyoming, where sagebrush habitats remain relatively contiguous and intact, represent one of the species' last strongholds (Braun 1998). Kemmerer RMP DEIS at 3-80. Therefore, the Kemmerer planning area is vital habitat for sage-grouse and maintenance of this quality habitat is essential for regional persistence of the species.

**1. BLM Failed to Utilize Available Scientific Information**

BLM itself has designated the Greater sage-grouse as a "sensitive" species.<sup>13</sup> Kemmerer RMP DEIS at 3-80. In doing so, the agency made a commitment to use "all methods and procedures which are necessary to improve the condition of special status species and their habitats to a point where their special status recognition is no longer warranted." BLM Manual 6840 at .01. Pursuant to BLM policy, "[i] and use plans shall be sufficiently detailed to identify and resolve significant land use conflicts with special status species without deferring conflict resolution to implementation-level planning." *Id.* at .21J. The Preferred Alternative fails to meet these commitments.

The Preferred Alternative in the DEIS opens nearly all significant sage-grouse habitat to new leasing. Kemmerer RMP DEIS, Maps 11 and 26. Moreover, the mitigation measures imposed on oil and gas development discussed for the Preferred Alternative in the DEIS are inadequate to prevent the downward trend of sage-grouse populations in the planning area.<sup>14</sup>

<sup>13</sup> Sensitive species are those species that:

(1) could become endangered in or extirpated from a State, or within a significant portion of its distribution; (2) are under status review by the FWS and/or NMFS; (3) are undergoing significant current or predicted downward trends in habitat capability that would reduce a species' existing distribution; (4) are undergoing significant current or predicted downward trends in population or density such that federal listed, proposed, candidate, or State listed status may become necessary; (5) typically have small and widely dispersed populations; (6) inhabit ecological refugia or other specialized or unique habitats; or (7) are State listed but which may be better conserved through application of BLM sensitive species status.

BLM Manual 6840 (Glossary of Terms at 8).

<sup>14</sup> Because the Kemmerer RMP DEIS relies on mitigation measures that cannot achieve the results described with respect to sage-grouse, the description of environmental impacts contained in the DEIS is inaccurate.

7

10-11-2007 03:11pm From:BLM - KEMMERER FIELD OFFICE 3078284539 T-326 P.010/050 F-825

The DEIS simply fails to make use of available scientific data that would aid BLM in evaluating, anticipating, and preventing impacts to sage-grouse. Scientific data has shown that even a minimal level of development within 3-5 km of a sage-grouse lek negatively influences breeding activity. In fact, recent information from a doctorate dissertation on the impacts of oil and gas development to Greater sage-grouse in the Pinedale Anticline revealed that, as development increased, lek activity declined up to 100%. Holloran (2005). Based on these findings, both Holloran (2005) and Connelly *et al.* (2000) recommend implementing at least a 5 km buffer around active sage-grouse leks.<sup>15</sup>

Despite these recommendations, a ¼-mile NSO buffer around known sage-grouse leks remains BLM's mitigation measure of choice in Wyoming. Kemmerer RMP DEIS at 2-8. NWF and WWF do not believe that this buffer is adequate to conserve Greater sage-grouse and their habitat. The United States Fish and Wildlife Service repeatedly has stated that this ¼-mile buffer should not be considered as appropriate mitigation for sage-grouse.<sup>16</sup>

BLM's the Preferred Alternative does propose a 2-mile seasonal "avoidance area"<sup>17</sup> around leks in addition to the ¼-mile NSO buffer. Yet, the agency itself admits that "data indicate a 2-mile buffer would inadequately protect sage-grouse leks, nesting success, and recruitment of yearlings . . ." Pinedale RMP DEIS at 4-210. Mitigation measures are intended to offset negative impacts, thereby protecting wildlife species. NWF and WWF do not understand why BLM would choose to implement mitigation measures that it knows will be inadequate.

We strongly suggest that BLM review the sage-grouse mitigation measures proposed in other western states. For example, the State of Colorado is revising its sage-grouse conservation strategy. The ¼-mile NSO buffer for leks is not part of that proposal.<sup>18</sup>

<sup>15</sup> While NWF and WWF support the efforts of the Sage-grouse Working Groups, BLM's management of this sensitive species ultimately must be guided by the best science.

<sup>16</sup> See Comments filed by the United States Fish and Wildlife Service on the Decision Record for the Red Rim POD (Quarter mile NSO "should not be considered a mitigation measure.")

<sup>17</sup> According to the DEIS:

In terms of buffers, prohibit means no activity or impact will be allowed during a specific time period or a designated habitat area, unless specific biological exception conditions are met. Avoid means to utilize guidance for avoidance when possible.

Kemmerer DEIS at 4-122. So, an "avoidance area" buffer for nesting areas provides no guarantee that surface disturbing activities will not be permitted during times when sage-grouse are using those habitats.

<sup>18</sup> Included in the Colorado's draft Greater Sage-grouse Conservation Plan is an interesting discussion of the history of the ¼-mile buffer. According to this document, "[t]he BLM started using the ¼ mile Plan, Appendix B at B-6 (June 15, 2007). In the four decades since this guideline was adopted, sage-grouse populations have continued to drop. It is time to identify something better.

8

Appendix B – Public Response Documents

Instead, Colorado's Division of Wildlife has proposed a buffer of 0.6 miles. See Draft Colorado Greater Sage-grouse Conservation Plan, Appendix B at B-6 (June 15, 2007) [available at <http://wildlife.state.co.us/WildlifeSpecies/SpeciesOfConcern/Birds/GreaterSagegrouseConservationPlan.htm>]. The State of Montana's Fish Wildlife and Parks Department has pushed to expand closed areas to four miles for the seasonal restrictions and one mile for the year-round closures.

NWF and WWF also note that under the Preferred Alternative, BLM would designate much of the Kemmerer Resource Area as "suitable for wind energy development." Many of the lands so designated include sage-grouse habitat. Kemmerer RMP DEIS, Maps 26 and 39. To protect special status wildlife species, such as the Greater Sage-grouse, Alternative D "avoids" new high-profile structures within one mile of occupied sagebrush obligate habitats unless anti-perch devices are installed on the structures. Alternative D also prohibits these structures from relying on guy wires for support in these habitats; however, exceptions can be granted. Kemmerer RMP DEIS at 2-28.

NWF and WWF encourage BLM to look at more aggressive approaches to conserving sage-grouse and sage-grouse habitat within the Kemmerer Resource Area.<sup>19</sup> We note that the construction of wind facilities may pose many of the same adverse impacts on sage-grouse as are associated with oil and gas development.<sup>20</sup> The DEIS also concludes that the long-term surface disturbance associated with wind energy development will be several times greater than that resulting from oil and gas development. Kemmerer RMP DEIS, Appendix M at M-6.

2. The Monitoring Strategy Detailed for Sage-grouse in the DEIS is Inadequate

Again, none of the alternatives described in the DEIS include implementation of strategies to monitor the health of sage-grouse populations.<sup>21</sup>

Winter habitat is also not adequately addressed in the DEIS. This is partially due to the fact that the winter habitat of sage-grouse has not been adequately researched or mapped.

<sup>19</sup> We also note that continued development pressures on sage-grouse habitat may result in the species being listed as threatened or endangered pursuant to the provisions of the Endangered Species Act. Both NWF and WWF would like to avoid such a result. To do so, we believe BLM and other land management agencies must begin to look seriously at establishing refugia by placing some sage-grouse habitat off-limits to energy extraction and other significant human disturbances. Those decisions have to be based primarily upon the quality of the habitat and its importance to conservation of healthy populations of sage-grouse. In areas where energy extraction or other activities are permitted, BLM must ensure the effectiveness of its mitigation measures.

<sup>20</sup> While NWF and WWF support the development of renewable energy resources, these facilities must be properly sited and managed to mitigate wildlife impacts.

<sup>21</sup> The DEIS states only that BLM and WGFD will monitor lek use. Kemmerer RMP DEIS at 3-81.

This should be done prior to commencement of the project so that well pads and other facilities are not placed directly in winter habitat.<sup>22</sup>

II. The DEIS Fails to Provide the Requisite "Hard Look" at the Potential Environmental Impacts of the Action Alternatives on Wildlife

NEPA requires all federal agencies take a "hard look" at the potential environmental impacts of their proposed actions and disseminate the conclusions of this analysis to the public. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). Through this process, an agency must prepare a "coherent and comprehensive up-front environmental analysis to ensure informed decision making to the end that 'the agency will not act on incomplete information, only to regret its decision after it is too late to correct.'" *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1216 (9<sup>th</sup> Cir. 1998) (quoting *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989)). The DEIS for the Kemmerer planning area must provide that hard look before BLM leaps to adopt a land use plan that will place significant public resources at risk. It fails to do so.

As discussed above, the DEIS's discussion of environmental consequences is rudimentary. It is based upon a table of largely unsubstantiated data about surface disturbance for most proposed activities within the planning area.

With respect to oil and gas activities, the Kemmerer RFD does provide calculations for surface disturbance per well pad. However, projections regarding the number of new well pads seem low given the size of the oil and gas reserve and the amount of development predicted within adjacent Resource Areas. The RFD also relies on unsupported assumptions about the time required for successful reclamation. The DEIS should provide real data from past operations regarding both the timeframe and success of reclamation. Without additional information, the projections regarding long-term surface disturbance cannot support any of the conclusions in the DEIS regarding the severity of impacts to wildlife and wildlife habitat.

Moreover, impacts to wildlife species also cannot be adequately determined without greater information regarding locations of well, facility, and road sites. Impacts such as fragmentation and barriers to movement and migration can be effectively analyzed only when the actual location of well pads, facilities and roads are known. Impacts to big game species, particularly in crucial winter range, differ significantly depending on whether the development is concentrated in one area of the range or spread throughout. Likewise, impacts to sage-grouse depend on this distribution of development.

Finally, the DEIS refers to BMPs as measures intended to mitigate impacts to wildlife. What is missing, however, is any indication of where or when or if any of these measures

<sup>22</sup> NEPA requires BLM to collect the necessary data to make informed decisions regarding activities on the public lands.

Appendix B – Public Response Documents

10-11-2007 03:11pm From:BLM - KEMMERER FIELD OFFICE 3078284599 T-326 P 013/050 F-825

would be employed. Without knowing how many and which measures will be used, it is impossible to identify and compare the environmental impacts associated with this RMP.

**III. The DEIS Fails to Address How BLM Will Make Adequate Progress Toward Achieving Rangeland Health**

In the decade since BLM adopted standards and guidelines for ensuring compliance with the Fundamentals of Rangeland Health, the agency has completed assessments for less than a quarter of the grazing allotments in the Kemmerer Resource Area. According to the Summary of the Management Situation Analysis (Kemmerer MSA) completed by BLM in November 2003, more than a million acres of rangeland in the Kemmerer Resource Area (two thirds of the lands included in grazing allotments) remain in poor condition. Kemmerer MSA at 40. More than half of the rivers and streams within the planning area are not in "properly functioning condition." Kemmerer RMP DEIS, Table 3-17 at 3-53. Still, the DEIS merely restates the legal requirement that BLM manage rangelands to meet these standards and guidelines. NWF and WWF urge BLM to adopt a strategy for achieving that requirement in this RMP, including deadlines for completing allotment assessments and enforceable measures for meeting the standards.

**CONCLUSION**

While NWF and WWF commend BLM for recognizing that some areas should be unavailable for leasing and protected from full development, we are concerned about the transience of many of those designations. We are also disappointed that few of the mitigation measures proposed for wildlife will offer sufficient protection from the impacts of oil and gas development that must be anticipated for the planning area.

Thank you for considering these comments.

Sincerely,



Kathleen C. Zimmerman  
Senior Land Stewardship Policy Specialist  
Rocky Mountain Natural Resource Center  
National Wildlife Federation  
2260 Baseline Road, Suite 100  
Boulder, Colorado 80302



Mark Winland  
Executive Director  
Wyoming Wildlife Federation  
P.O. Box 106  
Cheyenne, Wyoming 82003

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Appendix B – Public Response Documents

Public Response Document 00045

10-11-2007 09:12am From:BLM - KEMMERER FIELD OFFICE 3078284539 T-326 P.017/050 F-825



**United States Department of the Interior**

NATIONAL PARK SERVICE  
National Trails System – Salt Lake City  
324 South State Street, Suite 200  
Salt Lake City, Utah 84111



00045

IN REPLY REFER TO:

October 11, 1007

Memorandum

To: Field Manger, Kemmerer Field Office, Bureau of Land Management

From: Superintendent, National Trails System-Salt Lake City

Subject: Kemmerer RMP Revision

Thank you for this opportunity to study and comment on the draft Kemmerer Resource Management Plan Revision. We are pleased that the preferred alternative, Alternative D, is superior to the current RMP in its ability to protect National Historic Trail segments, related resources, and viewshed. While we would, of course, prefer the even greater protections that would be provided by Alternative B, we recognize that BLM must strike a reasonable balance between cultural resource protection and those of the nation's energy development needs. 5

Alternative B offers some proactive management actions that would benefit historic trails while not unduly restricting other legitimate resource uses, and we suggest that these actions be added to or strengthened under Alternative D. For example, we would like to see the preferred alternative specify that cultural resource management plans will be (rather than could be) developed for Emigrant Spring/Slate Creek, Emigrant Spring/Dempsey, Johnston Scout Rock, Alfred Corum and Nancy Hill emigrant gravesites, Pine Grove emigrant camp, and Rocky Gap trail landmark. When planning efforts such as these are regarded as optional, as the preferred alternative currently allows, then they often become permanently low-priority tasks that are unlikely to be undertaken. Other proactive management actions that easily could be carried over to Alternative D include installation of directional signs, trail markers, and interpretive signs; acquiring legal access for public visitation to trail segments; and developing a trail stewardship program as described under the current Alternative B. 5

We also would like to see the preferred alternative provide a somewhat more equitable compromise between development and historic trail interests with regard to protective buffer zones (which prohibit disturbance of physical trail remnants) and viewshed protection zones (which protect visual corridors) along historic trail. Under Alternative B, the resource protection alternative, surface-disturbing activities along high-management 5

p. 2 18017411102

10-11-2007 09:12am From:BLM - KEMMERER FIELD OFFICE 3078284539 T-326 P.018/050 F-825

trail segments would be prohibited for one mile on each side of the trail and within a 1-mile radius of gravesites and landmarks, as compared to just ¼ mile under both Alternatives C (the industry alternative) and D (the preferred alternative). Buffer zones for medium management trail segments are ½ mile on each side of the trail under Alternative B, but just 500 feet under both Alternatives C and D; and buffer zones for low management trail segments are ¼ mile on each side under Alternative B but just 100 feet under Alternatives C and D. We ask you to consider expanding those zones under the preferred alternative to ¼ mile along high management segments, ¼ mile for medium management segments, and 500 feet for low management segments. A similar compromise seems in order for the viewshed protection zones. 1

To aid you in the revision of the draft RMP, we observe that there exists some potential for even careful readers of the document to confuse the protective buffer zones with the viewshed protection zones/visual corridors. The zones are adequately defined, but the terminology is introduced many pages before the reader encounters the definitions. The complexity of the document makes it easy for the reader to miss the critical information, or to read it and misunderstand it. 1

A more detailed discussion of trail management levels also would be helpful. It is unclear, for example, what precise criteria are used in determining a segment's management level, which stretches of trail have been identified as high, medium, or low management-level segments, and what, if any, linkage these classes have to the highly useful trail classification scheme developed by the Oregon-California Trails Association. Further dialog with this office, trails partners, and other interested parties with regard to this (apparently new) trail management classification tool may be beneficial. 1

Finally, we are pleased to support your proposed designation, under the preferred alternative, of the Oregon-California National Historic Trail Special Recreation Management Area and of the Emigrant Springs Backcountry By-Way. We offer our assistance and partnership as your office implements those designations. 5

Sincerely,

*Aaron Mahr*

Aaron Mahr  
Superintendent

p. 3 18017411102

**Appendix B – Public Response Documents**

Public Response Document 00046

00046

October 10, 2007

Kemmerer Field Office  
Bureau of Land Management  
315 Highway 189  
Kemmerer, Wyoming 83101

Ref: Kemmerer Resource Management Plan (RMP)

Gentlemen:

Due to the volume of this document an extension of time is needed for a comment period.

I believe rather than use tax dollars to assemble such a sizable document we should let those who have managed the land for the last 150 years continue to manage it. They care for it and want to see its continued use for both domestic livestock and wildlife. The stock ponds they have built have allowed the wildlife to disburse into regions they did not access before due to the water supply.

I believe the whole issue is "TRUST". When I was young I was raised on a Ranch/Farm. When the government officials asked us to remove livestock due to dry conditions we did. When there was a good wet year and there was plentiful grass they allowed us to graze the aum's the allotment allowed. Now went the Rancher is told to remove aum's from his allotment he does not want to because the trust of working with the government is not there. The Rancher does not trust the government will allow him to increase the aum's to there original amount when there are good wet years.

Trust needs to be regained. We need to go back to basics. The stewards of the land who care for it need to be given help to care for it and not have to read the documents as the one you have prepared to defend what they already love and care for.

Sincerely,



Van C. Jhrfeorr^^  
P.O. Box 481  
Evanston, Wyoming 82931

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## Appendix B – Public Response Documents

### Public Response Document 00047

00047

EXPLORATION CORPORATION  
555 SEVENTEENTH STREET • SUITE 2400 • DENVER, COLORADO 80202 • 303-298-1000 • FAX 303-298-8881

October 10, 2007

*Via Overnight Delivery and Electronic Mail*

Bureau of Land Management  
Kemmerer Field Office  
Michelle Easley - Team Leader  
312 HWY 189N  
Kemmerer, WY 83101

Re: Anschutz Exploration Corporation and Ansbro Petroleum Company's  
Comments Regarding the Draft Resource Management Plan and  
Environmental Impact Statement for the Kemmerer Field Office Planning  
Area

Dear Ms. Easley:

Anschutz Exploration Corporation and Ansbro Petroleum Company (collectively "Anschutz") offers these comments on the Draft Resource Management Plan and Environmental Impact Statement for the Kemmerer Field Office Area ("RMP DEIS"). Anschutz owns and operates over 40,000 acres of federal and fee oil and gas leases within the Kemmerer Field Office. Any revision of the Kemmerer Resource Management Plan ("Kemmerer RMP") will have a significant impact upon Anschutz's future operations within the resource area.

**GENERAL COMMENTS**

**Sufficiency of Detail in Kemmerer RMP DEIS**

In general, the Kemmerer RMP DEIS provides insufficient information regarding potential impacts the implementation of the revised RMP may have upon oil and gas leasing and development. In particular, the RMP DEIS does not identify impacts to oil and gas development that may result from the wildlife timing limitations, visual resource management restrictions, and the special management areas proposed in the RMP DEIS. The descriptions of the proposed management actions do not provide oil and gas operators such as Anschutz with the information necessary to assess how such actions may impact their existing or future operations within the planning area. The BLM's analysis of the impacts of management decisions on oil and gas resources in Chapter 4 is often vague and cursory, even for a broad programmatic document such as a RMP. The BLM must provide

Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 2 of 23

additional analysis regarding the potential impacts the revised resource management plan may have upon future oil and gas leasing and development.

Most egregiously, the general categories of "Administratively Available Subject to Moderate Constraints" and "Administratively Available Subject to Major Constraints" do not provide Anschutz or the public the information needed to evaluate the proposed RMP and anticipate how new restrictions will impact existing or potential future operations in the planning area. The BLM should have separately mapped and identified areas with NSO stipulations, seasonal limitations, and controlled surface use stipulations under each alternative. The BLM should have specifically identified NSO areas. Timing and controlled surface use stipulations are vastly different than NSO stipulations, and the BLM's categories of "moderate" and "major" restraints fail to adequately distinguish between them. The BLM must provide this information in the Final EIS for the Kemmerer RMP or otherwise provide useable information regarding the types of stipulations being proposed.

**Anschutz's Existing Lease Rights**

The BLM's authority under FLPMA is expressly made subject to valid existing rights, 43 U.S.C. § 1701 note (2006), an RMP prepared pursuant to FLPMA, after lease execution and after drilling and production has commenced, is likewise subject to existing rights. See *Colorado Envtl. Coal. et al.*, 165 IBLA 221, 228 (2005). The Kemmerer RMP, when revised, cannot defeat or materially restrain Anschutz's existing right to develop its leases through conditions of approval or other means. See *Colorado Envtl. Coal. et al.*, 165 IBLA 221, 228 (2005) (citing *Colorado Environmental Coal.*, 135 IBLA 356, 360 (1996) *aff'd*, *Colorado Envtl. Coal. v. Bureau of Land Mgmt.*, 932 F.Supp. 1247 (D.Colo. 1996). Further, once the BLM has issued a federal oil and gas lease without a no surface occupancy stipulation, and in the absence of a nondiscretionary statutory prohibition against development, the BLM cannot completely deny development on the leasehold. See, e.g., *National Wildlife Fed'n et al.*, 150 IBLA 385, 403 (1999). Only Congress has the right to completely prohibit development once a lease has been issued. *Western Colo. Congress*, 130 IBLA 244, 248 (1994). The BLM must acknowledge that the Kemmerer RMP will not modify or impact Anschutz's lease rights.

In order to ensure the protection of existing lease rights, the BLM promulgated policies regarding the contractual rights granted in an oil and gas lease. The BLM's own Planning Manual specifically mandates the protection of existing lease rights. "All decisions made in land use plans, and subsequent implementation decisions, will be subject to valid existing rights. This includes, but is not limited to, valid existing rights associated with oil and gas leases. . . ." See BLM Manual 1601 - Land Use Planning, 1601.06.G (Rel. 1-1666 11/22/00). The BLM must ensure all existing lease rights are fully protected.

## Appendix B – Public Response Documents

Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 3 of 23

### RESOURCE MANAGEMENT ALTERNATIVES

#### **Alternative Components - Energy Policy Conservation Action Study**

The BLM suggests that it integrated the results of the original Energy Policy Conservation Action (EPCA) study into the Reasonably Foreseeable Development (RFD) Scenario for the Kemmerer RMP as required by BLM Instruction Memoranda 2003-233 and 2003-234 (Aug. 4, 2003). See RMP DEIS, pgs. 2-3 - 2-4 (Section 2.2.3). The BLM should carefully review the results and analysis contained in the Scientific Inventory of Onshore Federal Land's Oil and Gas Resources and the Extent and Nature of Restrictions or Impediments to Their Development (2006) (EPCA II) prepared in compliance with Section 604 of the Energy Act of 2000, Pub. L. No. 106-469, and Section 364 of the Energy Policy Act of 2005, Pub. L. No. 109-58. The EPCA II study demonstrates the negative impacts stipulations have upon oil and gas leasing and development. The EPCA study determined that 37% of the Wyoming Thrust Belt region, which partially encompasses the Kemmerer Planning Area, is unavailable for oil and gas leasing or only available with a NSO Stipulation. See EPCA II, pg. 115. Only 13.2% of the Wyoming Thrust Belt region is available with standard lease terms. *Id.* Most of the overall Wyoming Thrust Belt Region—69%—was administratively unavailable for oil and gas leasing when it included the 32% currently unavailable due to ongoing planning efforts. *Id.* These leasing restrictions rendered 144 billion cubic feet of natural gas unavailable in the Wyoming Thrust Belt area. *Id.* The BLM must evaluate the impacts more restrictive stipulations will have upon oil and gas development in the Kemmerer Resource Area and, as required by the Energy Policy Act of 2005, ensure that stipulations imposed are only as restrictive as necessary. See Energy Policy Act of 2005, Pub. L. No. 109-58, § 363(b)(3), 119 Stat. 594, 723(2005).

### MINERAL RESOURCES - OIL AND GAS

#### **Reasonably Foreseeable Development Scenario**

##### Baseline or Unconstrained Reasonably Foreseeable Development Scenario

The BLM's RFD Scenario for the Kemmerer Planning Area is unreasonably low, in part because the RFD inappropriately characterizes certain areas within the Planning Area as having a "low" potential for oil and gas development. The baseline or unconstrained RFD Scenario for the Kemmerer Planning Area anticipates only 2,040 wells (947 federal and 1,093 state and fee). See Final RFD Report, pg. 8-23; RMP DEIS, pg. 4-32. The BLM, however, forecasts that 1,740 of these wells will be drilled as part of the Moxa Arch Area Infill Development Project. See *id.*; see also Final RFD Report, pg. 7-7 ("The majority of the anticipated conventional oil and gas drilling activity will be infill wells in the fields on the Moxa Arch in the Green River Basin."). The RFD Scenario only

Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 4 of 23

anticipates that 300 wells will be drilled in the Wyoming Thrust Belt region. See Final RFD Report, pg. 8-24. This projection of future oil and gas activity fails to account for the currently anticipated level of development throughout the planning area, as well as potential development stemming from improved technology.

The BLM's unreasonably low RFD Scenario may result from its unsubstantiated characterization of most of the lands in the Wyoming Thrust Belt as having a "low" development potential for oil and gas resources. See Final RFD Report, pg. 7-8, Fig. 7-6; see generally RMP DEIS, pg. 3-21 ("The majority of federal mineral estate in the planning area (1,118,602 acres or 71%) is considered by the BLM to have low development potential for oil and gas resources."). The BLM should revise its development potential based on the most current data available. The BLM should then revise its impact analysis to focus on oil and gas occurrence potential and existing lease rights, particularly in the Wyoming Thrust Belt.

#### Reasonably Foreseeable Development Scenario in Alternative D

The RFD Scenario for Alternative D is also unreasonably low. The BLM predicts a total of 858 producing wells on federal minerals in the planning area between now and 2020. See RMP DEIS, Table 4-8, pg. 4-32. Given the fact that these numbers rival the number of wells anticipated to be drilled in the Moxa Arch area alone, and given the numerous other oil and gas fields located within the planning area, the BLM's RFD Scenario is unreasonably low. See Notice of Intent, 70 Fed. Reg. 58,738 (Oct. 7, 2005); Final RFD Report, Figs. 4-1 (Map of existing fields), 4-2 (Map of existing wells), pgs. 4-7 - 4-40 (describing historic production in the Kemmerer Resource Area). The BLM must update the RFD Scenario for Alternative D.

#### Reasonably Foreseeable Development Scenario is Not a Limit on Future Development

The BLM should expressly state in the Final EIS, the Record of Decision, and the RMP for the Kemmerer Planning Area that the RFD Scenario is not a planning decision or limitation on the level of development that can be authorized within the Kemmerer Resource Area. The BLM defines RFD as a "baseline scenario of activity assuming all potentially productive areas can be open under standard lease terms and conditions, except those areas designated as closed to leasing by law, regulation or executive order." BLM Instruction Memorandum 2004-089, Attachment 1-1 (Jan. 16, 2004). The RFD is not a Planning Decision or a "No Action Alternative" in the NEPA document, but is "based on scenarios adjusted under each alternative to reflect varying levels of administrative designations, management practices, and mitigation measures." *Id.* The BLM reviews geologic factors that control potential for oil and gas resource occurrence, as well as past and present technological factors that control the type and level of oil and gas activity, to

## Appendix B – Public Response Documents

Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 5 of 23

arrive at the RFD. The BLM also considers petroleum engineering principles and practices, as well as the economics of discovering and producing oil and gas. *Id.* at Attachment 1-3.

The IBLA has repeatedly held that the RFD Scenario is not a planning decision, nor is it a limit on future development. *National Wildlife Fed'n*, 170 IBLA 240, 249 (2006); *Wyoming Outdoor Council, et al.*, 164 IBLA 84, 99 (2004) (holding with respect to the Pinedale RMP that the RFD Scenario does not establish "a point past which further exploration and development is prohibited"); *Southern Utah Wilderness Alliance*, 159 IBLA 220, 234 (2003); *Theodore Roosevelt Conservation Partnership, et al.*, IBLA Docket No. 2007-208, Order at \*22 (Sept. 5, 2007); *Wyoming Outdoor Council, et al.*, IBLA Docket No. 2006-155, Order at \*26 - 27 (June 28, 2006); *Biodiversity Conservation Alliance, et al.*, IBLA No. 2004-316, Order at \*7 (Oct. 6, 2004) (citing *Southern Utah Wilderness Alliance*, 159 IBLA at 234). The number of decisions cited above reflects that the purpose of the RFD Scenario continues to be misinterpreted by, and thus litigated by, some groups and individuals. In order to prevent future litigation and appeals, the BLM must include language in the Kemmerer RMP describing the purpose of the RFD Scenario, and the fact that the RFD Scenario is not a planning decision or limitation on future development.

### Closure of Mineral Leasing Near Historic Trails

Anschutz urges the BLM not to adopt the management action under Alternative B that would close unleased areas within 5 miles of high-level management trail segments to new fluid mineral leasing. See RMP DEIS, Table 2-3, pg. 2-44, Record No. 2011. The decision to close areas to future leasing constitutes withdrawals of the minerals from lease. As such, the Department of the Interior will be required to comply with the procedural provisions of Section 204 FLPMA. 43 U.S.C. § 1714 (2006). Among the other requirements imposed on the Department of the Interior is the requirement for the Secretary of the Interior, as compared to the Director of the BLM or a State Director, to make all withdrawals of federal lands. 43 U.S.C. § 1714(a) (2006). The Secretary—or a designee in the Secretary's office appointed by the President and confirmed by the Senate—alone is authorized to make withdrawals under FLPMA. The Secretary is also required to provide notice of the proposed withdrawal in the Federal Register and conduct hearings regarding the withdrawal. 43 U.S.C. § 1714(b)(1) and (b) (2006). Finally, the Secretary is required to notify both houses of Congress of the proposed withdrawal. See 43 C.F.R. § 1610.6 (2006). The RMP DEIS does not suggest that the BLM has fulfilled or plans to fulfill the requirements of FLPMA before withdrawing the special management areas from future leasing. The BLM must follow the mandatory withdrawal procedures or decline to adopt stringent management prescriptions.

Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 6 of 23

## BIOLOGICAL RESOURCES

### Goals and Management Actions

#### BLM Goal of Preventing Loss of Crucial Habitat

The BLM has not adequately addressed or explained its scientific rationale for ensuring that no greater than 12.5 percent net loss of crucial habitat occurs in the planning area over the life of the plan. See RMP DEIS, Table 2-3, pgs. 2-50 - 2-51. The BLM has not identified any measures it plans to implement to achieve this goal or otherwise explained how it will meet this goal. The BLM must not enforce this generalized management objective to compromise existing lease rights. The BLM cannot adjust a lessee's valid and existing rights. Congress made it clear when it enacted FLPMA that nothing therein, or in the land use plans developed thereunder, was intended to terminate, modify, or alter any valid or existing property rights. See 43 U.S.C. § 1701 note (2006). Any measures the BLM takes to achieve its goal of preventing loss of crucial habitat cannot alter or materially restrain Anschutz's legal rights under its existing leases. Anschutz urges the BLM to remove this goal to avoid interfering with existing lease rights.

#### Offsite Compensatory Mitigation

As a management action common to all alternatives, the BLM states that it will "utilize appropriate voluntary offsite compensatory mitigation if necessary after all onsite mitigation has been accomplished or if onsite mitigation is not feasible." See RMP DEIS, Table 2-3, pg. 2-52, Record No. 4004. Similarly, although the BLM indicates in the RMP DEIS that offsite mitigation is voluntary, it suggests elsewhere that operations will only be approved if offsite mitigation has been established. See, e.g., RMP DEIS, pgs. 2-50 - 2-53. BLM policy, however, provides only that "offsite mitigation is to be entirely voluntary on the part of the applicant" because the BLM does not have the authority to require offsite mitigation. See BLM Washington Office Instruction Memorandum 2005-069 (Sept. 30, 2006). Furthermore, offsite mitigation is not appropriate for most oil and gas projects and therefore the BLM should not routinely encourage its use. Oil and gas development is an integral part of the BLM's mission. Federal oil and gas lessees have both the right and the obligation to maximize the recovery of oil and gas resources from public lands, and lessees should not be required to fund offsite mitigation every time development operations are proposed. As the BLM Wyoming State Director recognized in 1995, "compensation, as a form of off-site mitigation, is not to be a routine operation of BLM in Wyoming." See BLM Wyoming Instruction Memorandum WY-96-21 (Dec. 14, 1995). Often, the imposition of mandatory offsite mitigation could result in uneconomic operations, leading to reductions in lost tax revenue and domestic energy supplies.

## Appendix B – Public Response Documents

Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 7 of 23

Consistent with existing BLM policy, the BLM must clearly state in the Kemmerer RMP that offsite compensation is entirely voluntary and that it is not appropriate for every natural gas development project within the Kemmerer Planning Area. Furthermore, the BLM should expressly state in the Kemmerer RMP that offsite mitigation should only be used as a last resort. BLM Washington Office Instruction Memorandum 2005-069 (Sept. 30, 2006). Additionally, the BLM must make clear that offsite mitigation should only be considered when it will effectively offset the impacts of a proposed action. Finally, the BLM should expressly state that offsite mitigation will be based upon assessments of site-specific strategies designed to ensure long-term species viability rather than the funding of studies and project administration.

### Special Status Species (Wildlife)

#### Wildlife Seasonal Restrictions Generally

The wildlife seasonal restrictions on development identified as applying to all alternatives, including the BLM's preferred alternative, are unreasonably restrictive and must be revised. Application of the wildlife seasonal restrictions could easily result in a 107-day window for drilling activities in many parts of the planning area. For example, a 107-day drilling window could result from a big game crucial winter range stipulation (November 15 through July 31), *see* RMP DEIS, pg. 2-53, or the combination the sage grouse winter habitat stipulation (November 15 through March 14) and the general raptor stipulation (February 1 through July 31), *see id.* at 2-63. Furthermore, the combination of other stipulations could result in a drilling window as short as 60 days. *See, e.g., id.* at 2-53 (crucial winter range restriction), 2-63 (burrowing owl restriction from April 1 through September 15). The BLM should review and revise the proposed stipulations to ensure they are only as restrictive as necessary. *See* Energy Policy Act of 2005, Pub. L. No. 109-58, § 363(b)(3), 119 Stat. 594, 723.

By dramatically shortening the limited drilling window in many parts of the Kemmerer Resource Area, the new stipulations would significantly reduce potential domestic energy production from the Resource Area if adopted. The RMP DEIS does not fully disclose the impacts of the limited drilling window on oil and gas development in the Kemmerer Resource Area. It does not, for example, forecast the number of lands on which the drilling window would be substantially shortened due to the new stipulations. Similarly, the RMP DEIS should include a discussion the extent to which production may drop in the resource area as a result of these stipulations. Finally, the BLM must acknowledge that it cannot impose new or unreasonable restrictions on existing leases when evaluating the proposed wildlife restrictions in the RMP DEIS.

Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 8 of 23

#### Big Game Crucial Winter Range Restriction

On page 2-53 of the RMP DEIS, the BLM identifies the following management action for all alternatives: "Avoid disruptive activity in big game crucial winter range November 15 to April 30." *See* RMP DEIS, Table 2-3, pg. 2-53, Record No. 4012. The BLM must define the term "disruptive activity" to identify which activities are permitted during the restrictive period.

If the BLM intends to prohibit drilling activities between November 15 and April 30, this restriction unreasonably narrows the window during which operators may drill on new leases. The BLM has not adequately explained why such a restrictive stipulation is necessary to protect big game crucial winter range. *See id.* at 4-90 - 4-91. Furthermore, the BLM has not adequately analyzed the impacts of the restriction on oil and gas production in the Kemmerer Resource Area. *See id.* at 4-28 - 4-30. The BLM should revise this stipulation or, at a minimum, provide a detailed explanation of why such a broad restriction is necessary to protect big game crucial winter range and how the restriction will impact oil and gas production.

The BLM should not define "disruptive activities" to prohibit routine production operations. The seasonal stipulations in the existing Kemmerer RMP prohibit construction and drilling activities in crucial winter ranges, but do not prohibit routine production operations necessary to safely maintain facilities. The BLM should not preclude all production operations in crucial winter range areas, because this decision would effectively preclude year-round production operations and lead to a significant decrease in domestic energy production. Moreover, many species such as pronghorn antelope and mule deer have been found to habituate to increased traffic so long as the movement remains predictable. *See* Reeve, A.F. 1984. *Environmental Influences on Male Pronghorn Home Range and Pronghorn Behavior*. PhD. Dissertation; Irby, L.R. *et al.* 1984; "Management of Mule Deer in Relation to Oil and Gas Development in Montana's Overthrust Belt" *Proceedings III: Issues and Technology in the Management of Impacted Wildlife*. The BLM must ensure that its management actions are clearly understood, that existing lease rights will be maintained, and that production operations are allowed to continue throughout the year.

The BLM should have but did not identify the crucial wildlife habitat areas that will be closed to all motor vehicle access seasonally under most if not all of the alternatives. *See* RMP DEIS, pgs. 4-103 - 4-104. Furthermore, the BLM does not clearly state whether these areas will be closed to all activities, including routine oil and gas maintenance and production activities in the description of the alternatives in Chapter 2, instead only vaguely referencing the seasonal closure in Chapter 4 when discussing potential environmental impacts to wildlife. *See* RMP DEIS, pgs. 4-103 - 4-104. The BLM's Final EIS for the Kemmerer RMP must include this information.

## Appendix B – Public Response Documents

Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 9 of 23

Finally, the BLM must separately map big game crucial winter range by species. Map 22 only identifies collective crucial winter range for all big game species. Mule deer, elk, moose, and pronghorn antelope have different crucial winter range habitats, and thus the BLM has previously applied different seasonal restrictions for each species. Operators such as Anschutz are unable to accurately determine how future operations may be impacted by seasonal stipulations for each species given the information presented in the RMP DEIS. The BLM must provide more detailed maps of identified big game crucial winter range for each species. *See, e.g.,* Pinedale RMP Draft EIS (2007), Maps 3-15, 3-16, 3-17, 3-18, 3-19. Without this information Anschutz cannot assess whether its operations will be impacted.

### Specific Wildlife Management Actions Proposed Under Alternative B

Under Alternative B, the BLM proposes a management action to avoid habitat fragmentation and prohibit disturbance on more than three percent (3%) of "available habitat." *See* RMP DEIS, Table 2-3, pg. 2-62, Record No. 4039; *see also* RMP DEIS, pg. 2-19 ("Alternative B also restricts habitat fragmentation to no more than three percent (3%) of available habitats in identified special status species habitats."). This objective is unreasonably restrictive and not supported by reasoned analysis. Furthermore, except for Map 25, which maps some but not all special species habitat, the BLM has not identified the "special status species habitats" burdened with the surface disturbance restriction. Without identifying the habitat subject to the restriction, Anschutz cannot meaningfully understand how this management action might impact existing or future operations. Because several BLM Wyoming Sensitive Species are sagebrush obligate species, this proposed management action may cap surface disturbing operations at three percent (3%) across most of the planning area. This restriction is unreasonable, does not comport with the BLM's obligation to manage lands for multiple use, and would adversely impact oil and gas development within the Kemmerer Resource Area. Accordingly, the BLM should not select this restriction as part of the final RMP.

The BLM also should not select for the final RMP the proposed management actions for sage grouse under Alternative B because they are unreasonably restrictive. *See* RMP DEIS, Table 2-3, pg. 2-62, Record No. 4040. The BLM has failed to demonstrate such restrictions are necessary in the Kemmerer Resource Area because it has not presented any information about sage grouse populations in the area. Information released from the WGFD in March of 2007 noted that while there have been historic declines in sage grouse populations, there have been mid-term and short-term increases in populations. The BLM, State of Wyoming, and other interested groups are engaged in cooperating efforts that have been effective and should be allowed to continue. The BLM should also consider the impacts hunting has upon the overall sage grouse population, and weigh the economic impacts of limiting oil and gas activities, rather than hunting activities, on the State of Wyoming and the local area.

Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 10 of 23

Anschutz also objects to Alternative B's proposed prohibition on structures taller than 12 feet and the use of guy wires in occupied sagebrush obligate habitat. *See* RMP DEIS, Table 2-3, pg. 2-63, Record No. 4042. Because sage grouse obligate habitat occupies nearly the entire planning area, this prohibition will apply to most of the planning area. The prohibition appears to apply to temporary structures such as oil and gas drilling rigs that are over 12 feet high and require the use of guy wires during drilling operations. If the prohibition indeed applies to temporary structures, the BLM's management action would preclude oil and gas development in the entire resource area, would violate existing lease rights, and would cause devastating negative impacts to the local economy and the production of domestic energy. The proposed management action does not leave the BLM the flexibility it requires to effectively manage the public lands for multiple uses. The BLM must delete the proposed management action.

Anschutz urges the BLM to delete or substantially revise the management actions addressing pygmy rabbit habitat, white-tailed prairie dog habitat, and migration corridors set forth in Alternative B. *See* RMP DEIS, Table 2-3, pg. 2-64, Record Nos. 4044, 4045, 4046. Under this alternative, the BLM would prohibit any surface disturbing operations in identified pygmy habitat and white-tailed prairie dog colonies over 100 acres, and would "preserve" migration and travel corridors, regardless of site-specific conditions. *Id.* The BLM has not mapped or identified in the RMP DEIS all of the areas subject to these restrictions. *See* RMP DEIS, Map 25 (only describing white-tailed prairie dog colonies over 100 acres). Therefore, Anschutz cannot determine how or whether these restrictions will impact its existing or proposed operations. Additionally, these restrictions may impermissibly interfere with Anschutz's existing lease rights. As the BLM is aware, it cannot adjust a lessee's valid and existing rights. Congress made it clear when it enacted FLPMA that nothing therein, or in the land use plans developed thereunder, was intended to terminate, modify, or alter any valid or existing property rights. *See* 43 U.S.C. § 1701 note (2006). Furthermore, these management actions are not justified by the current status of the species concerned. The USFWS recently rejected petitions to list the white-tailed prairie dog and the pygmy rabbit as endangered or threatened species. The FWS issued a Notice of 90-day Petition Finding determining that the White-Tailed Prairie Dog (*Cynomys leucurus*) should not be listed as an endangered or threatened species on November 9, 2004. *See* 69 Fed. Reg. 64889. Similarly, the FWS issued a Notice of 90-day Petition Finding on the Pygmy Rabbit (*Brachylagus idahoensis*) on May 20, 2005, determining that listing the Pygmy Rabbit (*Brachylagus idahoensis*) was not warranted. *See* 70 Fed. Reg. 29253 (May 20, 2005). The BLM has not adequately explained the reasons for such restrictions management actions in light of the status of the species affected. All three management actions under Alternative B must be deleted or substantially revised.

## Appendix B – Public Response Documents

Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 11 of 23

### Specific Wildlife Management Actions Proposed Under Alternative D

Anschutz finds the proposed management actions under Alternative D to be more acceptable than those proposed under Alternative B. Unlike the management actions under Alternative B, which impose mandatory blanket prohibitions that curtail the BLM's ability to manage future operations, the actions proposed as part of Alternative D provide the BLM with flexibility to make site-specific decisions. The BLM must be allowed to make decisions based on site-specific and changing conditions.

Although the management actions in Alternative D are generally acceptable, some of the management actions incorporate elements of the inappropriate and unreasonable management actions proposed under Alternative B. The proposed management actions for sage grouse under Alternative D are unreasonably restrictive. See RMP DEIS, Table 2-3, pg. 2-62, Record No. 4040. Just as with the sage grouse management actions under Alternative B, the BLM has failed to demonstrate such proposed restrictions are necessary in the Kemmerer Resource Area. As explained above, the agency has not presented data regarding sage grouse population in the Kemmerer Resource Area. Information released from the WGFD in March of 2007 noted that while there have been historic declines in sage grouse populations, there have been mid-term and short-term increases in populations. Cooperative efforts between the BLM, State of Wyoming, and many others are working and should be allowed to continue. Appropriately, the BLM has provided for sufficient flexibility under Alternative D to modify or change the restrictions based on site-specific information or changing conditions.

Similarly, Anschutz opposes to the management action requiring the avoidance of structures taller than 12 feet and the use of guy wires in occupied sagebrush obligate habitat under Alternative D. See RMP DEIS, Table 2-3, pg. 2-63, Record No. 4042. Like the similar management action proposed in Alternative B, the prohibition appears to apply to temporary structures such as oil and gas drilling rigs that are higher than 12 feet and require the use of guy wires during drilling operations. Although this management action only requires the "avoidance" of such structures, as compared to the prohibition of such structures under Alternative B, the management action could result in the "avoidance" of oil and gas development throughout much of the resource area if it applies to temporary structures. Therefore, this management action could preclude oil and gas development in the entire resource area, would violate existing lease rights, and would cause devastating negative impacts to the local economy and the production of domestic energy. The BLM must delete this proposed management action or, at a minimum, explain that it does not apply to temporary structures.

Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 12 of 23

Anschutz is concerned with the BLM's proposed management actions for pygmy rabbit habitat and white-tailed prairie dog habitat under Alternative D, which generally require the avoidance of surface disturbing activities in identified pygmy rabbit habitat and the avoidance of activities that could result in the collapse of white-tailed prairie dog burrows. See RMP DEIS, Table 2-3, pg. 2-64, Record Nos. 4044, 4045. Like the management actions for these species proposed as part of Alternative B, the management actions in Alternative D are not justified by the current status of the pygmy rabbit and white-tailed prairie dog. As noted above, the USFWS recently determined that it was not necessary to list either the white-tailed prairie dog or the pygmy rabbit as endangered or threatened species. See Notice of 90-day Petition Finding, 69 Fed. Reg. 64889 (Nov. 9, 2004); 90-day Petition Finding, 70 Fed. Reg. 29253 (May 20, 2005). Should the BLM include the management actions as the final Kemmerer RMP, the BLM must significantly modify them to provide the BLM with the flexibility it needs to manage the lands for multiple uses, and expressly acknowledge existing lease rights.

With respect to the management action for white-tailed prairie dog colonies, see RMP DEIS, Table 2-3, pg. 2-64, Record No. 4045, the BLM should include language clarifying that BLM will consider engineering and safety concerns. Therefore, this management action should be revised to read: "To the extent reasonable, feasible, and consistent with engineering and safety concerns and existing rights, avoid activities that could result in the collapse of burrows in occupied white-tailed prairie dog colonies over 200 acres or greater, unless appropriate mitigation occurs, or activities are otherwise justified and reasonable based on site-specific conditions."

Finally, Anschutz urges the BLM to revise a management action to avoid habitat fragmentation through various means proposed under Alternative D. See RMP DEIS, Table 2-3, pg. 2-62, Record No. 4039. Although this management action is generally acceptable, the BLM should insert the word "reasonable" into the management action and include a specific reference to the consideration of safety and engineering practices. As such, the BLM's management action should provide as follows: "Avoid habitat fragmentation through *reasonable* attenuation, siting, and consolidation of roads, energy facilities, and other development, *with consideration for engineering feasibility and safety*, in special status species habitat, unless appropriate mitigation is initiated." This revision would provide the BLM additional flexibility. Furthermore, the BLM should identify the special status species habitat subject to this management action. Other than Map 26, which identifies some but not all, of the special status species habitat, the BLM has not identified "special status species habitats." Because several BLM Wyoming Sensitive Species are sagebrush obligate species, this proposed objective presumably applies to the entire resource planning area. Anschutz cannot determine whether and how this requirement might affect existing or future operations. If the BLM only intends to limit surface

## Appendix B – Public Response Documents

Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 13 of 23

disturbing operations in the habitat identified in Map 26, the BLM should articulate its intentions.

### VISUAL RESOURCE MANAGEMENT

#### **Visual Resource Management Restrictions Under Alternatives B and D**

The visual resources management proposed under Alternatives B and D burdens too large of an area within the planning area and is overly restrictive. Both alternatives propose a significant increase in the amount of acreage subject to Class I and II visual resource management (VRM) restrictions. See RMP DEIS, Table 2-3, pgs. 2-89 - 2-90, Record No. 6052, Maps 55 & 57. As a result, these alternatives propose to prevent oil and gas development throughout much of the planning area.

The discussion of Alternatives in the RMP DEIS does not clearly explain what activities the Class II VRM prescriptions will prohibit or limit in the Planning Area. See *id.* at Table 2-3, pgs. 2-89 - 2-90, Record No. 6052. On page 4-28, the BLM explains that it "can permit geophysical exploration activities in more restrictive [VRM] areas because the operations are short-term activities. See *id.* at pg. 4-28. The discussion of Class II VRM prescriptions in Appendix N, however, explains that surface disturbances will be prohibited in Class I and II VRM Areas. *Id.* at App. N, pg. N-2. Appendix N further provides that surface disturbances may occur in Class II areas only when a permittee and the BLM "arrive at an acceptable plan for mitigation of anticipated impacts." *Id.*

The restriction on surface disturbances in areas designated as Class II VRM is unacceptable. First, the surface disturbance restriction appears to prohibit oil and gas development in any Class II VRM Area, without regard for existing lease rights. The management prescriptions set forth in a planning document such as an RMP cannot alter existing lease rights. Congress made it clear when it enacted FLPMA that nothing therein, or in the land use plans developed thereunder, was intended to terminate, modify, or alter any valid or existing property rights. See 43 U.S.C. § 1701 note (2006). Second, the surface disturbance restriction is unacceptable because, even though it can only apply to restrict activity on future leases, it will impede current lessees' ability to obtain right-of-ways (ROWs) to their leaseholds. Although oil and gas leases do not guarantee access to the leasehold, a federal lessee is entitled to use such part of the surface as may be necessary to produce the leased substance. 43 C.F.R. § 3101.1-2 (2006). With respect to approved units, the IBLA has explained that "[w]hen a federal unit has been approved and the unitized area is producing, rights-of-way are generally not required for production facilities and access roads within the unit area." *Southern Utah Wilderness Soc'y, et al*, 127 IBLA 331, 372 (1993). The BLM must recognize the lessee's right to use the lands included within their leasehold or units in order to develop the oil and gas resources. Third, the surface disturbance restriction is unacceptable because the BLM does not explain what it

Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 14 of 23

considers an "acceptable plan" to mitigate impacts and therefore when surface disturbances will be permitted. Without additional guidance, operators such as Anschutz cannot predict if and how they will be able to secure right-of-ways to existing leases. Finally, Anschutz objects to the BLM's attempt to introduce the surface disturbance restriction through the "backdoor" by only referencing it in Appendix N. This restriction is not expressly acknowledged anywhere in the discussions of the Class II VRM prescriptions in main body of the RMP DEIS. In the final RMP/EIS, the BLM must revise Appendix N to delete or modify the surface disturbance restriction to recognize existing lease rights and explain when surface disturbing activities will be permitted. Moreover, the BLM must clearly identify the management prescriptions associated with VRM Class II designations, and analyze the impacts of these prescriptions on oil and gas development, in the main body of the RMP/EIS.

Anschutz strenuously objects to the BLM's decision to apply the Class II VRM restrictions to large areas of land throughout the Kemmerer Planning Area under Alternatives B and D. See RMP DEIS, Table 2-3, pgs. 2-89 - 2-90, Record No. 6052, Maps 55 & 57. The Class II designations in Alternatives B and D will drastically limit oil and gas development in much of the Kemmerer Resource Area, particularly the Wyoming Thrust Belt. Under Alternative B, more than half of the federal mineral estate managed by the Kemmerer Field Office would be subject to Class I and II VRM restrictions. See RMP DEIS, pg. 2-10. The "moderate" and agency-preferred Alternative D still proposes to triple the number of acres of BLM-administered mineral estate subject to a Class II VRM restriction, so that one-third of the federal mineral estate managed by the Kemmerer Field Office (550,133 acres) would be subject to Class I and II VRM restrictions. See *id.* Furthermore, under both Alternatives B and D, most of the land subject to Class II restrictions is along and surrounds the Wyoming Thrust Belt. When the burdensome Class II VRM restrictions are applied to the large tracts of land under Alternatives B and D, the BLM effectively precludes development throughout the Wyoming Thrust Belt. See RMP DEIS, Maps 55 and 57. See RMP DEIS, Maps 55 & 57. Such a reduction in oil and gas development in the Kemmerer Resource Area would result in a dramatic loss of oil and gas revenues that will negatively impact the local economy. The BLM must not adopt the VRM Class II designations in Alternative B that inappropriately apply to much of the planning area. Additionally, the BLM must revise the VRM Class II designations in Alternative D so that they do not blanket large swaths of the resource area, particularly in the Wyoming Thrust Belt.

## Appendix B – Public Response Documents

Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 15 of 23

Not only are the VRM designations under Alternatives B and D unacceptable, the BLM failed to adequately analyze the impacts these VRM designations will have on oil and gas development in Section 4.2.2.2 of Chapter 4 of the RMP DEIS. The RMP DEIS does not specifically address the substantial impacts of prohibiting surface disturbing activities across broad sections of the planning area under the VRM Class II designations in Alternatives B and D. *See id.* at pgs. 4-31 - 4-34. The RMP DEIS inappropriately characterizes the surface disturbance restriction as a "moderate" impact on oil and gas development. *See id.* at Map 11. In fact, a prohibition on surface disturbance is a "major" constraint on oil and gas development that will affect operators' ability to obtain leases and develop lands subject to the restriction. The RMP DEIS does not describe the impacts of the restriction on the ability to lease and develop oil and gas in the planning area, particularly in the Wyoming Thrust Belt. Similarly, the RMP DEIS does not describe how the Class II VRM designation will impact holders of existing leases throughout much of the planning area by making right-of-ways to access leaseholds more difficult to obtain. The BLM should explain how these restrictions will impact existing operations and the production of domestic energy resources, consistent with the requirements of EPCA. The BLM must revise the discussion of the impacts of the alternatives in Section 4.2.2.2 of Chapter 4 to include analysis of the significant impacts of the VRM designations.

### Viewshed Protection Management

Anschutz opposes the proposed viewshed protection measures under Alternatives B and D because they are unnecessarily restrictive. *See* RMP DEIS, Table 2-3, pg. 2-92 - 2-94, Record Nos. 6053, 6054, 6055. The viewshed protection measures are more restrictive than those proposed in Wyoming BLM Instruction Memorandum No. 2002-001 (Oct. 26, 2001), and subsequently withdrawn upon the finding that the existing management was adequate. *See* Wyoming BLM LM. No. 2002-019 (Mar. 8, 2002). In the RMP DEIS, the BLM failed to explain why the proposed viewshed management restrictions are necessary or why the existing viewshed restrictions are inadequate. The BLM also did not sufficiently detail how the proposed viewshed protection measures will impact existing operations and the production of domestic energy resources, consistent with the requirements of EPCA. Finally, the BLM did not adequately explain how the management restrictions associated with "viewshed preservation" differs from the VRM Class II restrictions that it proposes to also apply within a 3-mile buffer of historic trails. *Compare* RMP DEIS, Table 2-3, pgs. 2-89 - 2-90, Record No. 6052 *with id.* at Table 2-3, pgs. 2-93 - 2-94, Record No. 6055. The two separate restrictions appear duplicative and unnecessary. In the final RMP, the BLM should include only those restrictions necessary to protect the historic trails, consistent with the requirements of EPCA.

Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 16 of 23

The BLM's preferred alternative proposes to restrict "high profile structures" more than 12-feet high within the historical trail viewshed. *See id.*; *see also id.* at pg. 4-161. The BLM does not clearly explain whether this prohibition can be waived or modified. In the final RMP/EIS, the BLM should describe the circumstances in which it may waive or modify the prohibition on high profile structures. Additionally, the BLM should revise this prescription to make clear that it does not prohibit temporary structures such as drilling rigs. The BLM's preferred alternative also provides that it will not designate right-of-way corridors "where they conflict with NHT management objectives." *See id.* at pg. 4-163. The BLM must make clear that the right-of-way corridors do not conflict with the viewshed protection measures identified under Alternative D.

The viewshed restrictions are also unreasonable because they cover too much of the planning area. Alternative B proposes to preserve the viewshed within 10 miles of "high management segments," 5 miles for "medium management level" segments, and  $\frac{1}{2}$  mile for "low management level" segments along the NHTs. *See* RMP DEIS, Table 2-3, 2-3, pg. 2-93, Record No. 6055, pg. 4-161. Alternative B also proposed to preserve the viewshed within 10 miles of NRHP-listed sites. *See id.* at pg. 4-156. The BLM has not provided reasons as to why such broad viewshed restrictions are necessary along the NHT. As noted on page 3-95 of the RMP DEIS, management objectives are designed to "preserve the settings to retain their integrity at distances up to 3 miles on each side of high management segments. The BLM has not explained why the existing management objectives are inadequate. In fact, this Alternative requires viewshed preservation to extend much farther than necessary beyond the NHTs. Because of these broad restrictions, the BLM should not adopt the viewshed protection measures proposed in Alternative B. Even the BLM's preferred alternative, however, proposes to impose viewshed protection measures over an unreasonably large area. As Map 60 indicates, the historic trails are close to each other in some parts of the planning area and, as a result, the viewshed protection areas overlap, imposing viewshed protection measures on large blocks of land. *See id.* at Map 60. Under Alternative D, a single area covering six townships within the Wyoming Thrust Belt would be subject to viewshed protection. *See id.* at Maps 58 & 60. The BLM should revise the viewshed protection restrictions described in Alternative D so that they do not burden large single tracts of land within the planning area. Additionally, the final RMP must make clear that any viewshed protections shall not apply to existing leases because the BLM cannot impose mitigation measures which are inconsistent with existing lease rights.

### HERITAGE RESOURCES - NATIONAL HISTORIC TRAILS

Anschutz opposes the BLM's proposed management of the National Historic Trails (NHT) under Alternative B because it would close too large of an area to leasing and impose overly burden management restrictions on the surrounding land.

## Appendix B – Public Response Documents

Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 17 of 23

Anschutz is opposed to the proposal under Alternative B to prohibit fluid leasing within five (5) miles of "high level management trail segments." See RMP DEIS, Table 2-3, pg. 2-44, Record No. 2011. The BLM has not adequately identified which lands will be made unavailable for future leasing in order to protect "high-level management trail sections." Although Map 9 generally indicates where lands will be made unavailable to future leasing, it does not specify why or through which mechanism the lands have been made unavailable to lease. Similarly, although Map 28 shows the general NHTs within the planning area, the specific trails, or more importantly specific sections of the trails, are not separately mapped. Maps 58, 59, and 60 do not clearly delineate which lands will be made unavailable for lease. More detailed information is necessary for the operators to understand how new management actions for NHTs may impact oil and gas operations. In the Final EIS for the Kemmerer RMP, the BLM should separately map and identify the various segments of the "high-level management trail sections" and the lands surrounding said trails that will be made unavailable for lease in a separate map.

Additionally, Anschutz does not believe the proposal to make large areas of the Kemmerer RMP unavailable for future leasing and development in order to protect historic trails is necessary. Such a decision could also constitute a withdrawal and trigger procedural and substantive limitations under FLPMA. The BLM must not illegally attempt to withdraw lands from leasing or mineral entry. The BLM, operators, and the Wyoming State Historic Preservation Office have a long history of working together to develop operations in a manner that allows for continued development while still protecting historic resources. The BLM has not justified this onerous restriction, and it must not be selected by the BLM.

In Section 4.5.1.2 of Chapter 4 of the RMP DEIS, the BLM describes the burdensome restrictions it proposes to place on the management of NHTs within the planning area under Alternative B. See RMP DEIS, pgs. 4-161 - 4-163. The BLM does not adequately describe either how oil and gas operations will be adversely impacted, or how the BLM will ensure that existing lease rights are protected. The BLM may not restrict operations on existing leases. In the final RMP, the BLM must acknowledge that its proposed management of historic trails cannot apply to existing leases.

Furthermore, on page 4-162, the BLM concludes that the restrictive measures proposed under Alternative B would "result in beneficial impacts compared to Alternative A." See RMP DEIS, pg. 4-162. This statement ignores the impacts from the proposed management on oil and gas resources. The proposed management directives under Alternative B, including those for NHTs, will have profoundly negative impacts upon the recovery of domestic energy resources, including the loss 328.88 billion cubic feet of natural gas compared to No Action Alternative. As discussed below, Alternative B would also lead to a 30% decrease in regional earnings compared to Alternative A, and a 36%

Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 18 of 23

reduction in tax revenue. See RMP DEIS, pg. 4-242. The BLM must correct the statement on page 4-162.

### SPECIAL DESIGNATIONS

#### **Fossil Basin Area of Critical Environmental Concern/Management Area**

Anschutz opposes the proposal to designate the Fossil Basin Area of Critical Environmental Concern (ACEC) or Management Area under Alternative B. See RMP DEIS, Table 2-3, pg. 2-96, Record No. 7013. The proposal would exclude development from an unreasonably large area 541,452 acres (201,660 acres of BLM administered surface and 250,146 acres of federal minerals) that encompasses the oil and natural resources in the Wyoming Thrust Belt. The BLM has sufficient authority to protect fossil resources without the creation of an ACEC. Furthermore, as the BLM has recognized, excluding development in these areas may not aid the discovery of fossil resources. See BLM ACEC Nomination/Documentation for Kemmerer RMP Revision (Fossil Basin ACEC). Finally, the BLM has not adequately analyzed how the proposed ACEC designation would impact oil and gas operations. The BLM's cursory statement that mineral development may be adversely impacted is not sufficient. The BLM cannot impede or interfere with existing oil and gas operations, especially those on existing leases.

Further, it is not clear the BLM complied with the procedural requirements imposed in the BLM's planning regulations regarding the designation of ACECs. The BLM Planning regulations require the State Director, upon approval of a draft RMP, to publish a notice in the Federal Register identifying any potential ACECs and describing the resource use limitations that would be imposed if the ACECs were adopted. See 43 C.F.R. § 1610.7-2(b) (2006). Although the BLM's Federal Register Notice of July 13, 2007, notes the existence of the proposed Fossil Basin ACEC, it does not adequately describe the potential resources limitations within the area. See 72 Fed. Reg. 38615, 38616 (July 13, 2007). Because the BLM failed to comply with this requirement during the revision of the Casper RMP, the BLM was recently required to re-open comments with respect to ACECs when it issued the Final RMP/EIS for the Casper RMP. See 72 Fed. Reg. 31848 (June 8, 2007).

Such procedures may confuse and taint the public participation process associated with the development of a revised RMP for the Kemmerer Planning Area.

#### **Emigrant Springs Back Country Byway**

Anschutz opposes the management restrictions associated with the Emigrant Springs Back Country Byway ("Byway") proposed under Alternatives B and D. See RMP DEIS, Table 2-3, pg. 2-101, Record No. 7018. The proposed management of the Byway

## Appendix B – Public Response Documents

Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 19 of 23

would retain 4.5 miles of the road as a primitive two-track road and 11 miles as crowned and ditched gravel road, all for recreational use. *Id.* Accordingly, this management would prohibit future upgrades of the road. Because the proposed Byway is the only access into the Anschutz leasehold and much of the Wyoming Thrust Belt, Anschutz objects to management prescriptions for the Byway that would not afford the BLM the flexibility to upgrade the road in the future if necessary. Furthermore, Anschutz objects to the management of lands near the Byway as VRM Class II areas because, as explained above, this designation would excessively restrict oil and gas development in areas near the Wyoming Thrust Belt. See RMP DEIS, pg. 4-229 (noting that most of the Byway area will be managed as VRM Class II). The BLM should remove the proposed Byway from Alternative D or, alternatively, should revise management of the Byway under Alternative D to permit upgrades of the road.

### Special Management Areas

Anschutz opposes the designation of the Bear River Divide and Rock Creek/Tunp special management areas. See RMP DEIS, pgs. 2-97 - 2-98, Record Nos. 7014, 7015. Under Alternative B, the areas would be closed to all new mineral leasing, and under Alternative D, the areas would be closed to all new fluid mineral leasing except for the reissuance of expired leasing. See *id.* Under the more "moderate" Alternative D, designation of the two areas would result in 120,121 acres closed to oil and gas leasing. See *id.* atpg. 2-14.

The management prescriptions for the Bear River Divide and Rock Creek/Tunp special management areas under Alternatives B and D result in illegal withdrawals of lands for oil and gas leasing from the public domain. The decision to close the special management areas to future leasing constitutes withdrawals of the minerals from lease. As such, the Department of the Interior will be required to comply with the procedural provisions of Section 204 FLPMA. 43 U.S.C. § 1714 (2006). Among the other requirements imposed on the Department of the Interior is the requirement for the Secretary of the Interior, as compared to the Director of the BLM or a State Director, to make all withdrawals of federal lands. 43 U.S.C. § 1714(a) (2006). The Secretary—or a designee in the Secretary's office appointed by the President and confirmed by the Senate—alone is authorized to make withdrawals under FLPMA. The Secretary is also required to provide notice of the proposed withdrawal in the Federal Register and conduct hearings regarding the withdrawal. 43 U.S.C. § 1714(b)(1) and (h) (2006). Finally, the Secretary is required to notify both houses of Congress of the proposed withdrawal. See 43 C.F.R. § 1610.6 (2006). The RMP DEIS does not suggest that the BLM has fulfilled or plans to fulfill the requirements of FLPMA before withdrawing the special management areas from future leasing. The BLM must follow the mandatory withdrawal procedures or remove these stringent management prescriptions.

Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 20 of 23

Anschutz also opposes the adoption of the management action under Alternative B that would not authorize any new surface disturbance in the Bear River Divide and Rock Creek/Tunp special management areas. See RMP DEIS, pgs. 2-97 - 2-98, Record Nos. 7014, 7015. This management action appears to prohibit oil and gas development within the special management areas, without regard for existing lease rights. The management prescriptions set forth in a planning document such as an RMP cannot alter existing lease rights. BLM Manual 1601 - Land Use Planning, 1601.06.G (Rel. 1-1666 11/22/00). Congress made it clear when it enacted FLPMA that nothing therein, or in the land use plans developed thereunder, was intended to terminate, modify, or alter any valid or existing property rights. See 43 U.S.C. § 1701 note (2006). Additionally, the management action is unacceptable because, even though it can only apply to restrict activity on future leases, it will impede current lessees' ability to obtain right-of-ways (ROWs) to their leaseholds. Although oil and gas leases do not guarantee access to the leasehold, a federal lessee is entitled to use such part of the surface as may be necessary to produce the leased substance. 43 C.F.R. § 3101.1-2 (2006). With respect to approved units, the IBLA has explained that "[w]hen a federal unit has been approved and the unitized area is producing, rights-of-way are generally not required for production facilities and access roads within the unit area." *Southern Utah Wilderness Soc'y, et al.*, 127 IBLA 331, 372 (1993). The BLM must recognize the lessee's right to use the lands included within their leasehold or units in order to develop the oil and gas resources.

Similarly, the BLM must not adopt the management action under Alternative D that would only allow construction activities in the Bear River Divide and Rock Creek/Tunp special management areas "with the goal of no further loss of habitat function" from construction activities. See RMP DEIS, pgs. 2-97 - 2-98, Record Nos. 7014, 7015. Anschutz also cautions the BLM not to restrict all new right-of-way actions to existing disturbance zones. See *id.* The BLM must not enforce these management actions to compromise existing lease rights. The BLM cannot adjust a lessee's valid and existing rights. Congress made it clear when it enacted FLPMA that nothing therein, or in the land use plans developed thereunder, was intended to terminate, modify, or alter any valid or existing property rights. See 43 U.S.C. § 1701 note (2006).

Any measures the BLM takes to achieve its goal of preventing loss of crucial habitat cannot alter or materially restrain Anschutz's legal rights under its existing leases.

### AIR QUALITY RESOURCE

Statements within the BLM's management alternatives for air quality in the Kemmerer RMP DEIS suggest that the BLM is attempting to regulate air quality emissions in the resource area. The BLM does not, however, have any direct authority over air quality or air emissions under the Clean Air Act (CAA). 42 U.S.C. §§ 7401 *et seq.*; see RMP DEIS, pg. 3-10; Appd. J, pgs. J-5, J-7. The CAA expressly vests the Environmental

## Appendix B – Public Response Documents

Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 21 of 23

Protection Agency (EPA) with the authority to regulate air emissions, which has delegated its authority to the State of Wyoming. The BLM has recognized its lack of authority to regulate air emissions in recently released project-level documents. See Draft Supplemental Environmental Impact Statement for the Pinedale Anticline Oil and Gas Exploration and Development Project (PAPA SDEIS), pg. 4-62 ("Air pollution impacts are limited by state and federal regulations, standards, and implementation plans established under the Clean Air Act and administered by the applicable air quality regulatory agency (WDEQ/AQD and EPA) . . . The applicable air quality regulatory agencies have the primary authority and responsibility to review permit applications and to require emission permits, fees, and control devices prior to construction or operation."); see also *Wyoming Outdoor Council, et al.*, IBLA No. 2006-155, Order at \*12 (June 28, 2006). The BLM lacks authority to regulate emissions in Wyoming.

Similarly, federal law restricts BLM's authority to regulate potential visibility impacts. Under the CAA, the WDEQ regulates potential impacts to visibility, and authority over air quality in general, and a federal land manager's authority is limited to evaluating whether a "proposed major emitting facility will have an adverse impact" on visibility within designated Class I areas. 42 U.S.C. §§ 7407(a), 7475(d)(2)(B) (2006). Regional haze state implementation plans (SIPs) that are being developed will operate to prevent impairment of visibility in Class I areas. 42 U.S.C. § 7410(a)(2)(J). Although federal land managers with jurisdiction over Class I areas may participate in the development of these regional haze SIPs, the BLM has no such jurisdiction in Wyoming because it does not manage Class I areas. 42 U.S.C. § 7491 (2006). Therefore, the BLM lacks any authority over air quality and cannot directly or indirectly impose emissions restrictions on natural gas operations in Wyoming, specifically if the intention is to reduce potential visibility impacts.

The BLM must revise its air quality management goals and objectives in Table 2-3 to reflect BLM's limited authority over air quality and air emissions in Wyoming. The BLM's first proposed Goal PR:1 states, "Minimize the impact of management actions in the planning area on air quality by complying with all applicable air quality laws, rules, and regulations." See RMP DEIS, pg. 2-35. The BLM's second proposed Goal PR:2 states, "Implement management actions in the planning area to improve air quality as practicable." *Id.* Because the BLM lacks authority to regulate air emissions, the BLM should revise or remove Goals PR:1 and PR:2. The BLM must at least more carefully define its lack of authority with respect to air quality "management actions." The BLM cannot regulate air emissions through its normal management responsibilities. Additionally, these goals should be revised to avoid legal challenges on the grounds that they prevent the BLM from authorizing any actions that may lead to increased emissions within the planning area. The BLM must revise its air quality goals so that BLM's only management goal, objective, or action will be to ensure that the WDEQ is invited to

Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 22 of 23

participate in the NEPA process consistent with the State of Wyoming's cooperating agency status. If the potentially illegal objectives contained in the RMP DEIS remain, the BLM must expressly disavow any that is attempting to regulate air emissions or air quality in the planning area.

Likewise, the management objectives in each of the alternatives are entirely beyond the BLM's authority. For example, the BLM's first management objective for air quality (identified as PR: 1.1) is to "maintain concentrations of criteria pollutants associated with management action in compliance with applicable state and federal Ambient Air Quality Standards (AAQS)." See RMP DEIS, Table 2-3, pg. 2-35. As noted above, the BLM and the IBLA have recognized that the authority to enforce AAQS in Wyoming rests with WDEQ, not the BLM. With respect to the BLM's second Objective (identified as PR: 1.2) to "[m]aintain concentrations of pollutants associated with management actions in compliance with the applicable Prevention of Significant Deterioration (PSD) increment," only the WDEQ has the authority to enforce PSD Increments in Wyoming. See RMP DEIS, Table 2-3, pg. 2-35. Objective PR:2.1 even more inappropriately indicates it is BLM's responsibility to "reduce visibility-impairing pollutants in accordance with the State of Wyoming's Regional Haze State Implementation Plan (SIP)." See RMP DEIS, Table 2-3, pg. 2-35. Opponents to development may suggest these Management Objectives prohibit the BLM from authorizing any actions which may increase emissions or have potential visibility impacts in the planning area. The BLM must revise or delete Goals PR:1 and PR:2 and modify or delete all four of the Objectives (PR: 1.1, PR: 1.2, PR:2.1, PR:2.2) identified under the air quality section of Table 2-3.

### Alternative B and Alternative D

The BLM must eliminate or entirely revise its proposed air quality management actions under Alternative B and Alternative D. Because the BLM lacks authority over air quality issues and cannot regulate air emissions in Wyoming, the BLM must delete all proposed management actions designed to "reduce emissions from existing sources." See RMP DEIS, Table 2-3, pg. 2-36, Record No. 1011. Additionally, the BLM must delete the proposed management action under both Alternatives B and D that would require or consider programs to offset emissions proposed by the RMP. See RMP DEIS, Table 2-3, pg. 2-36, Record No. 1011. The BLM lacks authority to maintain an emissions offsetting or trading program. Furthermore, this management action also improperly assumes the Kemmerer RMP proposes specific emissions. As the BLM is aware, the Kemmerer RMP itself will not authorize specific actions. The United States Supreme Court has explained that RMPs only provide general guidance and primarily are not a means of authorizing specific actions. *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. at 69. The BLM must delete this inappropriate management action.

## Appendix B – Public Response Documents

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Michelle Easley - Team Leader  
Anschutz Exploration Corporation Comments - Kemmerer RMP DEIS  
October 10, 2007  
Page 23 of 23

### **Appendix L - Air Quality Mitigation Matrix**

Because the BLM lacks authority over air emissions, the BLM cannot include Appendix L without further explanation or analysis, if at all. Although NEPA may obligate the BLM to discuss potential mitigation measures, 40 C.F.R. §§ 1502.14(f), 1508.25(b)(3), the BLM cannot impose most of the mitigation measures in Appendix L. For example, the BLM cannot impose requirements on the types of mobile drilling utilized within the Kemmerer Planning area or impose specifications on the use of SCR or other technologies. As explained above, only WDEQ and the EPA may regulate air emissions. In fact, only the EPA has the authority to impose emission requirements on mobile sources such as drilling rigs. See 42 U.S.C. § 7410 (2006) (noting that SIPS only apply to stationary sources). The BLM should include a detailed discussion in Appendix L explaining that because the BLM does not have authority over air quality or air emissions, the Appendix does not bind agency management decisions or impose substantive requirements.

### **CONCLUSION**

Anschutz Exploration Corporation appreciates the opportunity to submit its comments on the Draft Resource Management Plan and Environmental Impact Statement for the Kemmerer Field Office Planning Area and looks forward to participating in the BLM's analysis of this important project.

Very truly yours,

Anschutz Exploration Corporation

Margot K. Timbel  
Executive Vice President

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**Appendix B – Public Response Documents**

Public Response Document 00048



PIPELINE AUTHORITY

**00048**

152 No. Durbin Street, Ste 230  
Casper, WY 82601  
Phone: 307-237-5009  
Fax: 307-237-5242  
Bryan Jeffries, Executive Director  
Carla Hubbard, Administrator

Mark Doelger, Chairman  
Jim Peck, Secretary/Treasurer  
Jim Nielson, Member  
Duane Zavadi, Member  
Danny Rea, Member

October 10, 2007

Kemmerer RMP and EIS  
Bureau of Land Management Kemmerer Field Office  
Attention: Ms. Michele Easley  
312 Highway 189 North  
Kemmerer, WY 83101-9711

**RE: COMMENTS FOR DRAFT RESOURCE MANAGEMENT PLAN AND  
ENVIRONMENTAL IMPACT STATEMENT FOR THE KEMMERER FIELD  
OFFICE PLANNING AREA**

Dear Ms. Easley:

The Wyoming Pipeline Authority (WPA) is pleased to submit to the BLM comments regarding the Draft Resource Management Plan and Environmental Impact Statement for the Kemmerer Field Office Planning Area dated July 2007. The WPA recommends that **Alternative C** be adopted for the Kemmerer Field Office Planning Area.

The WPA commends the Kemmerer Field Office on the thoroughness of the referenced document and would like to endorse the Preferred Alternative. However, due to restrictions placed on rights-of-way under the Preferred Alternative, the WPA feels **Alternative C** with unrestricted corridor widths and case-by-case analysis is a more appropriate plan for pipeline infrastructure development. Archeological sites can be protected during the right-of-way application review process.

The WPA appreciates the opportunity to submit these comments. If you have any questions, please do not hesitate to contact us by email at [wyoingpipeline@qwest.net](mailto:wyoingpipeline@qwest.net) or by telephone at 307-237-5009.

Sincerely,

Carla Hubbard  
Administrator

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## Appendix B – Public Response Documents

### Public Response Document 00049

#### **GENE R. GEORGE & ASSOCIATES, INC.**

Petroleum • Geology • Engineering • Hydrogeology • Regulatory Permitting **00049**

111 West Second Street, Suite #400  
P.O. Box 2775  
Casper, WY 82602

Phone: 307-265-9199  
Fax: 307-473-7138  
E-mail: ggeorge@gge-inc.com

October 10, 2007

Kemmerer RMP and EIS  
Bureau of Land Management Kemmerer Field Office  
312Hwy189N  
Kemmerer, WY 83101-9711

**Re: YATES PETROLEUM CORPORATION'S COMMENTS AND RECOMMENDATIONS TO THE KEMMERER FIELD OFFICE DRAFT RESOURCE MANAGEMENT PLAN AND ENVIRONMENTAL IMPACT STATEMENT**

The following comments and recommendations are submitted on behalf of Yates Petroleum Corporation (Yates). Yates has been leasing and operating in the Rocky Mountain West for over 30 years. Yates appreciates the opportunity to comment on the Kemmerer Field Office Draft Resource Management Plan and Environmental Impact Statement.

These comments and recommendations reflect Yates' concern over the restrictive nature of the RMP not only to existing lease development but also to any future development. For instance, even though the RMP states on page ES-2 that "valid existing rights" will be recognized, there is no discussion of these rights in the rest of the document. This implies that "valid existing rights" will not be recognized. Yates feels that more clarification should be made as to how "valid existing rights" will be handled in the decision making process. Please consider this and the following comments in the preparation of the final RMP and EIS.

Respectfully submitted,



Tyler H. Vanderhoef & Mark Knoll  
Agents for Yates Petroleum Corporation

Copies: Rep. Barbara Cubin; Sen. Craig Thomas; Sen. Mike Enzi; Bob Bennett, BLM WSO; Lisa Norton, Yates; Janet Richardson, Yates

OVER 35 YEARS OF PROFESSIONAL INTEGRITY

#### VALID EXISTING LEASE RIGHTS (VER)

The Executive Summary identifies Planning Criteria that were used to drive preparation of the plan revision. However, the planning issues and criteria related to energy and minerals were limited to determining which areas are suitable or unsuitable for energy and mineral development and the commensurate level of development that should be allowed. Honoring valid existing rights is omitted from the criteria. The only place valid existing rights are acknowledged in the planning criteria is in relation to "special designations."

BLM identifies a second set of planning criteria on Page 1-11 that states the revised RMP will recognize valid existing rights. However, it is not specified in these planning criteria that recognition of these rights was incorporated as part of the planning decision-making process. This is an important point since according to BLM's Reasonably Foreseeable Development Scenario, of the 1.6 million acres in the KFO over 1.1 million acres are currently under lease; in fact many of these leases are decades old and were issued before the passage of the Federal Land Management and Policy Act (FLPMA). (Note, on Page 4-26 it is stated that approximately 917,785 acres of federal mineral estate currently are leased and held by production in the planning area. It is unclear whether BLM intended to address only leases held by production or whether this is an error with respect to lease holdings.)

Comment and Recommendation: Given the fact that nearly 70 percent of the planning area is under lease, BLM must clearly state in the Final EIS that the new restrictions proposed in the Preferred Alternative will not apply to most of the KFO. Moreover, it must be made clear that BLM has no authority to impose these new restrictions through Conditions of Approval (COA) on applications for permit to drill (APD) if they would abrogate the valid existing lease rights. Such qualifiers are consistent with current rules and policies of the BLM and must be clearly disclosed in the planning documents.

#### RANGE OF ALTERNATIVES

The current range of alternatives is inadequate by virtue of the inclusion of Alternative B. NEPA requires at 40 CFR 1502.14 that BLM include "reasonable" alternatives. However, even though the regulations may allow for alternatives outside BLM's jurisdiction, each alternative must adhere to the law, i.e., current statutes, regulations and policies. As such, BLM does not have the legal authority to impose the excessive restrictions contained in this alternative making it "unreasonable."

Comment and Recommendation: It would be illegal for BLM to incorporate many elements of Alternative B in any of the other alternatives, including the Preferred Alternative, because it would result in the abrogation of Valid Existing Lease Rights and illegally extends its authority over resource management held by other State and Federal agencies. As such, revisions to all the alternatives analyzed in detail

## Appendix B – Public Response Documents

must be made to remove all inappropriate management objectives identified in Alternative B. For example, BLM indicates it would consider under the Preferred Alternative a program developed under Alternative B to offset emissions proposed by the RMP. Since the RMP revision is a programmatic document that does not contain decisions for specific projects, it does not contain proposals for air emissions. As such, this proposed program is outside the scope of the RMP revision because it is impossible for BLM to make such determinations without a specific project proposal. In addition, both Alternatives B and D explain they will attempt to reduce emissions from existing sources by using more stringent techniques such as those included in Best Available Control Technologies. Again, such decisions are the function of the State of Wyoming, which has been given primacy for administration of the air quality program by the Environmental Protection Agency (EPA).

These are but a couple of the issues that render Alternative B outside the scope of viability. Other areas where the Alternative goes beyond what is reasonable and outside the law involve water, biological, cultural, soil, and visual resources as well as many of the proposals for special designations or management.

### WITHDRAWALS

Under Alternative D, BLM would make approximately 182,000 acres unavailable for oil and gas leasing. According to FLPMA, "withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than "property" governed by the Federal Property and Administrative Services Act, as amended (40 U.S.C. 472) from one department, bureau or agency to another department, bureau or agency" constitutes a withdrawal.

Comment and Recommendation: The removal of these lands from availability for leasing constitutes a withdrawal. However, in accordance with FLPMA, only the Secretary of Interior is authorized to make a withdrawal of lands as described above. The Secretary is also required to provide notice of a proposed withdrawal in the *Federal Register*, to conduct public hearings on the proposal and to notify Congress of the proposal. Clearly, such a "withdrawal" cannot be made through the resource management planning process. Therefore, it is necessary for the KFO to either revise its Draft RMP or follow the procedures for withdrawal outlined in FLPMA.

### WATER QUALITY

On page 4-19, the DEIS states that "mineral development is the primary activity with a potential to impact shallow groundwater." On page 4-18, however, it is

stated that "Direct impacts to groundwater quality and quantity could result from changes in the number of (water) wells, including water supply (wells), water disposal, oil and gas wells drilled, the condition and uses of existing (oil and gas) wells, the number of springs developed, water conservation efforts, and the amount of water that infiltrates the ground before flowing to the surface water system." (The text in parentheses was inserted for clarification of the text in the DEIS.)

Comment and Recommendation: Three of the listed factors that have the potential to impact groundwater are associated with oil and gas development: water disposal; oil and gas wells drilled; and the condition and uses of existing wells. With respect to oil and gas wells drilled, casing and cementing requirements are approved by the appropriate regulatory authority to ensure that no contamination of shallow fresh water zones would result. The procedures that regulate drilling an oil and/or gas well are strictly regulated by the BLM in Onshore Order #7 and by the State of Wyoming.

Fresh water encountered during drilling operations is reported to the BLM. Additionally, procedures that regulate disposal of produced water by subsurface injection in Wyoming are strictly regulated by the State of Wyoming and/or Environmental Protection Agency. Subsurface injection of produced water typically occurs in deep formations well below fresh water aquifers. Permit approval is thorough and arduous, ensuring that fresh water will not be contaminated. Therefore, the likelihood of contamination of groundwater from drilling new development wells or an injection well is remote. Cross-contamination of a water well has only been known to occur if the casing integrity of an older oil and gas well were compromised at shallow depth; therefore, groundwater contamination from oil and gas development is unlikely. The determination that "mineral development is the primary activity with a potential to impact shallow groundwater" is speculative and should be removed unless documentation can be provided within the text of the FEIS.

### WILDLIFE

Page 2-62 BLM states it will "Avoid habitat fragmentation through attenuation, siting, and consolidation of roads, energy facilities, and other developments in identified special status species habitat, unless appropriate mitigation is initiated."

Comment and Recommendation: We recommend this statement be revised as follows, "Avoid habitat fragmentation through *reasonable* attenuation, siting, and consolidation of roads, energy facilities, and other development, *with consideration for engineering feasibility and safety*, in special status species habitat, unless appropriate mitigation is initiated."

Map 26 must be revised to delineate all special status species habitat. As it now stands, there is no way for the public or industry to understand where this requirement would be implemented.

## Appendix B – Public Response Documents

Page 2-62

- Greater sage-grouse leks: (1) Avoid surface disturbance or occupancy within 1/4 mile of the perimeter of occupied greater sage-grouse leks; (2) Avoid human activity between 8 p.m. and 8 a.m. from March 1 through May 15 within 1/4 mile of the perimeter of occupied greater sage-grouse leks.
- Greater sage-grouse nesting and early brood-rearing habitats: Avoid surface-disturbing and disruptive activities in suitable greater sage-grouse nesting and early brood-rearing habitats within 2 miles of an occupied lek, or in identified greater sage-grouse nesting and early brood-rearing habitats outside the 2-mile buffer from March 15 through July 15.
- Greater sage-grouse winter habitat: Avoid surface disturbance and disruptive activities in occupied greater sage-grouse winter habitats from November 15 through March 14. Exceptions to CSU and timing restrictions will continue to be considered on a case-by-case basis.

**Comment and Recommendation:** We can find no analysis in the DEIS that demonstrates these new restrictions are justified. It is also unknown whether these seasonal restrictions would also apply to maintenance and operations of existing facilities or only to new construction and new drilling. We oppose application of these restrictions on operating wells due to safety issues, not to mention the loss of production. BLM must include an analysis and justification in the FEIS or eliminate the new constraints.

- *"Locate facilities or reduce noise levels to 49 dB or less as measured 900 feet from the noise source to minimize the impacts of continuous noise on species relying on aural cues for successful breeding."*

**Comment and Recommendation:** We can find no analysis or justification for this new constraint and we oppose its inclusion in the DEIS because it is overly restrictive. There is no information on how BLM determined that 900 feet and 49 decibels are the magic numbers. Moreover, BLM fails to provide information regarding how it intends to quantify background noise levels to determine whether or how noise levels have been impacted by a new facility.

- *Avoid new high-profile structures (higher than 12 feet) within 1 mile of occupied sagebrush obligate habitats unless anti-perch devices are installed.*
- *Prohibit new high-profile structures relying on guy wires for support in these habitats. Exceptions can be made if NEPA analysis shows little or no impact to sagebrush obligate species.*

**Comment and Recommendation:** We oppose this new restriction because it would eliminate the use of all drilling rigs, even though they are only temporary facilities. Clearly, this would be in violation of all existing lease rights and would prevent any future drilling activity on new leases. This new requirement must be eliminated from the FEIS because it would have a detrimental impact on energy activities.

Furthermore, it would create a needless impediment to the recovery of energy sources which is in direct conflict with the President's Energy Policy and EPCA.

### CHAPTER FOUR - ENVIRONMENTAL CONSEQUENCES

Pages 4-27-28. Methods and Assumptions

**Comment and Recommendation:** We strenuously object to the DEIS's practice of combining stipulations into the categories of moderate and major. We strongly recommend that each individual lease stipulation be identified and mapped by alternative in the FEIS, i.e., No Surface Occupancy (NSO), Timing Limitations (TL), Controlled Surface Use (CSU). As this information is currently portrayed, it is impossible to determine how existing and future leases will be impacted by the RMP. It is critical for BLM to recognize that companies refer to the RMP when evaluating lands for potential lease nominations, lease acquisitions and project level decisions.

*Page 4-29. Impacts from moderate constraints, while adverse, are typically indirect and not as severe as those resulting from major restrictions. Moderate constraints may limit the timing of development activities or require specific mitigation, but they do not necessarily remove the acreage from development or require directional drilling."*

**Comment and Recommendation:** These assumptions underestimate the impacts of wildlife timing limitations when they overlap with a number of different seasonal restrictions for a number of species. They also fail to take into account that restrictions in most areas are not limited to seasonal wildlife restrictions. Other restrictions identified in the DEIS involve ROW avoidance areas, VRM classifications, cultural resource and National Historic Trails restrictions as well as other restrictions designed to protect other resources. BLM must recognize that the combination of stipulations in a given area will result in highly severe impacts on oil and gas operators. It is unclear whether this combination was taken into account when determining impacts on future oil and gas operations.

*Page 4-50. Habitat Fragmentation and Biological Diversity, "...Large blocks of contiguous habitat with low oil and gas development potential are administratively unavailable for oil and gas leasing in alternatives B and D."*

**Comment and Recommendation:** No map that specifically identifies these large blocks is included in the DEIS. This must be remedied in the FEIS. We do not understand the rationale for making large blocks of land administratively unavailable for leasing. We assume that these areas have low potential for development because they have low potential for oil and gas. This should be clarified in the FEIS. Otherwise, the areas would have low potential for development because they will not be made available for lease. Nevertheless, it is evident BLM has decided that it wants to ensure these areas are not developed. However, it must be recognized that even areas with low geologic potential can contain viable resources that have yet to be discovered. Since industry has demonstrated its

## Appendix B – Public Response Documents

willingness to work with the agency to minimize impacts from oil and gas operations, it is unnecessary to arbitrarily withhold lands from leasing.

*Page 4-103. "Alternative D closes four big game crucial winter ranges to motorized vehicles annually from January 1 to April 30, although exemptions apply."*

Comment and Recommendation: We can locate no maps that identify these areas. Nor can we find any reference to the types of exemptions that may be granted. Again, we are concerned that these seasonal closures would impact well maintenance activities. We are also concerned that the DEIS fails to quantify the potential effects such closures would have on existing lessees and current or future activities. It is essential that the FEIS identify these seasonal closure areas along with the types of exemptions that may be allowed.

*Page 4-126, Section 4.4.8.2 - Special Status Species Wildlife (Sage Grouse) - "Specifically, mineral and energy development has been identified as a potential cause of declining greater sage-grouse populations (Wyoming Sage-Grouse Working Group 2003)."*

Comment and Recommendation: While we acknowledge that unchecked development can have a detrimental impact on sage-grouse populations, preliminary results of research conducted by R.C. Taylor, et al. (in prep.) indicates that Greater Sage-grouse continue to attend leks within existing gas fields in southwestern Wyoming even after more than 30 years of development and production activity (specifically the Moxa and Wamsutter gas fields). Ten generations of males would not continue to attend leks if females were not present in the area. Taylor used the WGFD Greater Sage-grouse and the Wyoming Oil and Gas Commission databases as the source of information for her work and compared impacted and un-impacted lek average male attendance in developed fields with differing densities, intensities and types of oil and gas production throughout the state and found that while Greater Sage-grouse appear to displace from high density development areas into less developed areas they continue to attend leks with up to 8 wells drilled per section (80 acre spacing). Male attendance was lower on impacted (>10 wells in the 2 mile radius) leks than on un-impacted leks. Avoidance of development within the 0.25 lek radius appeared to be critical to continued lek use. Population trend lines are similar on impacted and un-impacted leks, the WGFD management area and statewide, indicating that, while male attendance is lower on impacted leks, extirpation is not occurring and oil and gas development is not controlling Greater Sage-grouse populations on a field wide or population level.

We urge BLM to carefully consider its proposed mitigation of Sage-grouse to take into account all data that has been provided to the agency.

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Appendix B – Public Response Documents

Public Response Document 00050

00050

**Board of Lincoln County Commissioners**

925 Sage Avenue, Suite 302  
Kemmerer, WY 83101

307-877-9056 Ext: 313  
307-877-4237 Fax  
e-mail: [commission@lewy.org](mailto:commission@lewy.org)

**KENT CONNELLY, CHAIRMAN**  
Kemmerer, Wyoming 83101

**TAMMIE ARCHIBALD**  
Afton, Wyoming 83110

**JERRY T. HARMON**  
Afton, Wyoming 83110

October 11, 2007



Mary Jo Rugwell  
Field Manager  
Kemmerer Field Office  
Bureau of Land Management  
312 Highway 189 North  
Kemmerer, WY 83101-9711

Re: Cover Letter and Comments of Coalition of Local Government Members on Kemmerer Draft Resource Management Plan (draft RMP) and Draft Environmental Impact Statement (DEIS)

Dear Mary Jo,

The local government cooperators, including Lincoln, Sweetwater, and Uinta Counties, and the Conservation Districts for Lincoln, Sweetwater, and Uinta Counties, working through the Coalition of Local Governments (CLG) provide the enclosed comments to the above documents. The previously submitted comments are incorporated by reference as well.

We look forward to a post-comment cooperator meeting to address the issues raised by the local governments and the public.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
LINCOLN COUNTY

*Kent Connelly*  
Kent Connelly, Chair

*Jerry T. Harmon*  
Jerry T. Harmon

*Tammie Archibald*  
Tammie Archibald

**SWEETWATER**  
C O U N T Y

80 WEST FLAMING GORGS WAY - GREEN RIVER, WY 82935  
COURTHOUSE (307) 872-6338 - FAX (307) 872-6349

BOARD OF COUNTY COMMISSIONERS

WALLY J. JOHNSON, BOARD CHAIR  
COURTHOUSE (307) 872-6331 - HOME (307) 382-6064

JOE OLDFIELD, COMMISSIONER  
COURTHOUSE (307) 872-6332 - HOME (307) 362-8106

DENBY DELLAL BOESE, COMMISSIONER  
COURTHOUSE (307) 872-2287 - HOME (307) 382-5721

October 11, 2007

Mary Jo Rugwell  
Field Manager  
Kemmerer Field Office  
Bureau of Land Management  
312 Highway 189 North  
Kemmerer, WY 83101-9711

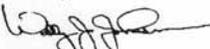
Re: Cover Letter and Comments of Coalition of Local Government Members on Kemmerer Draft Resource Management Plan (draft RMP) and Draft Environmental Impact Statement (DEIS)

Dear Mary Jo,

The local government cooperators, including Lincoln, Sweetwater, and Uinta Counties, and the Conservation Districts for Lincoln, Sweetwater, and Uinta Counties, working through the Coalition of Local Governments (CLG) provide the enclosed comments to the above documents. The previously submitted comments are incorporated by reference as well.

We look forward to a post-comment cooperator meeting to address the issues raised by the local governments and the public.

Sincerely,



Wally J. Johnson  
Sweetwater County  
Commission Chairman



Appendix B – Public Response Documents

**UINTA COUNTY**  
225 Ninth Street Evanston, Wyoming 82930

**PLANNING OFFICE**  
Kent Williams, County Planner  
307-783-0318 Fax: 307-783-0429  
kewilliams@uintacounty.com

October 11, 2007

Mary Jo Rugwell, Field Manager  
Bureau of Land Management  
Kemmerer Field Office  
312 Highway 189 North  
Kemmerer, Wyoming 83101-9711

RE: Cover Letter and Comments of Coalition of Local Government Members on Kemmerer Draft Resource Management Plan (draft RMP) and Draft Environmental Impact Statement (DEIS)

Dear Ms. Rugwell:

The local government cooperators, including Lincoln, Sweetwater, and Uinta Counties, and the Conservation Districts for Lincoln, Sweetwater, and Uinta Counties, working through the Coalition of Local Governments (CLG) provide the enclosed comments to the above documents. The previously submitted comments are incorporated by reference as well.

We look forward to a post-comment cooperator meeting to address the issues raised by the local governments and the public.

Kind regards,

/s/ Kent Williams  
County Planner



Lincoln Conservation District  
P.O. Box 98 - 110 Pine Street - Cokeville Town Hall, Room 1 - Cokeville, Wyoming 83114  
Phone (307) 279-3256

October 11, 2007

Mary Jo Rugwell  
Field Manager  
Kemmerer Field Office  
Bureau of Land Management  
312 Highway 189 North  
Kemmerer, WY 83101-9711

Re: Cover Letter and Comments of Coalition of Local Government Members on Kemmerer Draft Resource Management Plan (draft RMP) and Draft Environmental Impact Statement (DEIS)

Dear Mary Jo,

The local government cooperators, including Lincoln, Sweetwater, and Uinta Counties, and the Conservation Districts for Lincoln, Sweetwater, and Uinta Counties, working through the Coalition of Local Governments (CLG) provide the enclosed comments to the above documents. The previously submitted comments are incorporated by reference as well.

We look forward to a post-comment cooperator meeting to address the issues raised by the local governments and the public.

Sincerely,

Kenny Petersen,  
Treasurer  
Lincoln Conservation District

CONSERVATION • DEVELOPMENT • SELF-GOVERNMENT

## Appendix B – Public Response Documents



### SWEETWATER COUNTY CONSERVATION DISTRICT

Thomas Burris, Chairman Lee Splett, Vice-Chair Jean Dickinson, Secretary Mary M. Thoman, Treasurer Bob Stagowski, Member

79 Winston Drive, Suite 110

Rock Springs, Wyoming 82901 (307) 362-3062 (307) 362-1459 Fax

October 11, 2007

Michele Easley  
Kemmerer Field Office  
Bureau of Land Management  
312 Highway 189 North  
Kemmerer, WY 83101

Re: Comments on Kemmerer Draft Resource Management Plan Revision and Draft Environmental Impact Statement

Dear Ms. Easley,

Please find the enclosed comments saved in pdf format. The Sweetwater County Conservation District looks forward to working with the BLM in addressing the issues raised in the public comments.

Please call me if you have any questions or need a hard copy.

Sincerely,  
/s/ Mary Thoman, Supervisor  
Sweetwater County Conservation District



### Uinta County Conservation District

P.O. Box 370 ~ 100 East Sage Street ~ Lyman, WY 82937  
Phone: (307) 787-3794 ~ Fax: (307) 787-3810

October 11, 2007

Mary Jo Rugwell  
Field Manager  
Kemmerer Field Office  
Bureau of Land Management  
312 Highway 189 North  
Kemmerer, WY 83101-9711

Re: Cover Letter and Comments of Coalition of Local Government Members on Kemmerer Draft Resource Management Plan (draft RMP) and Draft Environmental Impact Statement (DEIS)

Dear Mary Jo,

The local government cooperators, including Lincoln, Sweetwater, and Uinta Counties, and the Conservation Districts for Lincoln, Sweetwater, and Uinta Counties, working through the Coalition of Local Governments (CLG) provide the enclosed comments to the above documents. The previously submitted comments are incorporated by reference as well.

We look forward to a post-comment cooperator meeting to address the issues raised by the local governments and the public.

Sincerely,

/S/ Shaun Sims

Shaun Sims  
Chairman

Uinta County Conservation District  
Board of Supervisors  
Shaun Sims  
Kelly Guild  
Spencer Eyre  
Kevin Condes  
Dennis Cornelison

## Appendix B – Public Response Documents

### TABLE OF CONTENTS COMMENTS ON KEMMERER DRAFT RMP & DEIS

**TAB DOCUMENT**

1. Comments to Draft RMP and DEIS in table format
2. Reply of Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District to Letter of Mary Jo Rugwell, July 13, 2007
3. Social and Economic Issues
4. Comments on the Glossary
5. Frank Hood Deed Depicting water diversion structures on Huff and Raymond Creek
6. Lincoln County Road Map
7. Withdrawals Under the Federal Land Policy and Management Act ("FLPMA")

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
1.	1-6		<p><b>H-8351-1 Wild &amp; Scenic Rivers Act Study Memorandum of Understanding between Dept. of the Interior, BLM and Public Lands Council Re Cooperative Rangeland Monitoring (Jan. 30, 2004) Memorandum of Understanding Between Wyoming Animal Damage Control Board, Wyoming Game and Fish Department, Wyoming Department of Agriculture, and U.S. Dept. of Agriculture, Wildlife Services (May 2002) H-8550-1 Interim Management Policy for Wilderness Study Areas</b></p> <p>If RMP incorporates some MOUs then it needs to include other equally relevant agreements.</p>
2.	1-7		<p>Add resolution of county road jurisdiction</p> <p>The RMP proposes a number of decisions without taking into account existing roads and trails. Regulation of public roads and trails is outside of BLM jurisdiction and thus this issue needs to be identified and addressed. Relevant decisions should be postponed, as well.</p>
3.		General	<p>Review and revise glossary definitions, particularly for regulatory terms, like surface disturbance, disruptive activities, avoid, avoidance area.</p> <p>See Comments on Glossary. Reference to pending State Office decision regarding definition of important terms causes a lot of consternation.</p>

Page 1 of 71

*Comments on Kemmerer draft RMP and DEIS*

## Appendix B – Public Response Documents

OCTOBER 11,2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
<b>EPCA Analysis Omitted</b>			
4.	2-43		<p><b>Goal MR: 2 Mineral resources will be managed to meet the objectives in the Mining and Minerals Policy Act and the Energy Policy Conservation Act of 2000.</b></p> <p>FLPMA directs that public lands be managed under its provisions and other statutes. 43 1701(b). RMP recognizes Energy Policy Act but EPCA called for BLM to assess obstacles and impediments to energy development, both production and transmission, identify and document that restrictions adopted are the least restrictive. The RMP fails to do either. The case for the least restrictive is also difficult to make since much of the area is under lease with less restrictive lease stipulations than those in the RMP.</p>
5.	2-43	General	<p><b>Goal MR3 Promote conservation of mineral resources through efficient and effective development and protect the revenue interests of the United States by managing leasing to avoid drainage from federal minerals.</b></p> <p>The plan needs to recognize the statutory duties to conserve oil and gas resources by ensuring that efficient and effective development occurs. Similarly, it is equally important that development does not result in drainage from unleased federal acreage.</p>

Page 2 of 71

*Comments on Kemmerer draft RMP and DEIS*

OCTOBER 11,2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
6.	1-24 4-31		<p>Revise major restriction to include VRM class II, wildlife habitat surface use restrictions, and exclusion from floodplains, riparian areas, and wetlands (to the extent they exist), and rights-of-way avoidance and exclusion areas.</p> <p>The Energy Policy and Conservation Act of 2000, P.L. 106-469, § 604, November 9, 2000, requires federal agencies to identify restrictions on both energy production and transmission, document that they are the least restrictive necessary and explain the basis for such restrictions. The RMP and DEIS fall short of meeting these statutory requirements, in part due to lack of data and in part due to confusing maps that sequentially displace restrictions but fail to display the cumulative effects.</p>

Page 3 of 71

*Comments on Kemmerer draft RMP and DEIS*

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS; Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
7.	4-28		<p>Revise the discussion and classification of moderate and major restrictions on energy production and energy transmission [4-28-4-30]. Six months or less exclusion qualifies a lessee for lease suspension in the interest of conservation. <i>Copper Valley Mach. Works Inc. v. Andrus</i>, 653 F.2d 595, 606 (9<sup>th</sup> Cir. 1981). If the total restrictions are six months, the constraints are major, not moderate.</p> <p>The DEIS also fails to conform to EPCA because it erroneously classifies VRM Class II as "moderate restriction." The Interim Management Policy for Wilderness Study Areas (MP II-8550-1,117, p. 17) adopts for VRM Class II to meet nonimpairment management objectives in §603(c). This "low contrast" or minimal visual change criteria for VRM Class II ensures little or no change in the visual resources. This is not a moderate constraint, it is a major constraint. Application of VRM Class II precludes permanent structures, like well pads, roads, and pipelines. The IBLA holds that VRM Class II cannot be enforced for a lease that authorizes surface use. <i>SUWA</i>, 144 IBLA 70, 84 (1998).</p>
8.	4-30 4-34		<p>As identified in the following comments, the DEIS fails to disclose the surface constraints that apply to brooding and occupied winter habitat outside the 2-mile leas displayed on Map 27. These criteria apply to most of the planning area. While sage grouse management are based on the IM governing sage grouse habitat, the DEIS must fully disclose and discuss the rationale for the restrictions and to quantify the direct and cumulative effects.</p>

Page 4 of 71
Comments on Kemmerer draft RMP and DEIS

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS; Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
9.	2-5		<p>Add principal multiple uses of mineral development, rights-of-way, timber, livestock grazing, fish and wildlife habitat, and recreation.</p> <p>FLPMA, in addition to the definition of multiple use, identifies six principal multiple uses for which additional congressional oversight was sought. 43 USC §1702(1). BLM must report closures that exceed 100,000 acres and must withdraw areas that are to be closed to future mineral development.</p>
10.	2-7		<p>Add statement that the WSA expansion is not a reasonable alternative because BLM has no authority to expand WSA.</p> <p>IM 2003-275.</p>
11.	2-37	1016	<p>Revise to remove mandatory 6" top soil because many sites may only 4" or less.</p> <p>BLM does not have adequate soil survey data to adopt this requirement.</p>
12.	2-38	1021	<p>Delete references to chemical and biological soils, because they are not known and not defined.</p> <p>The RMP lacks soils data. Issues relating to classification and management of chemical and biological soil crusts are scientifically controversial. Due to the lack of data, avoidance areas are not identified or mapped. Gold Book and RMP requirements to conserve soils provide sufficient guidance.</p>

Page 5 of 71
Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
13.	2-42	1033	Revise: No new permanent facilities are allowed in riparian areas or wetlands unless they (1) meet the requirements and intent of EOs 11988 and 11990, (2) <b>the proposed structure is reasonable to exercise lease rights, water rights, or other use of resources;</b> there are no practicable alternatives, and (3) appropriate mitigation measures are implemented.	The conditions on structures in riparian areas will preclude or limit water development projects and drilling and pipeline facilities. Given the long and successful history of water diversion structures, there is no sound reason to limit them or increase the regulatory burdens.
14.	2-43	2002	Delete "unleased"	As written, it prohibits geophysical exploration on leased land.
15.	2-43	2007 2008	Revise stipulation layers to existing lease map to reflect surface use restrictions for sage grouse that are not mapped. Revise acreage discussions between moderate and major constraints in chapters 2 and 4.	Map 19 depicts existing leases and Map 11 shows moderate versus major constraints. Map 11 is rendered inaccurate due to classifying VRM Class II as a moderate constraint and omitting the additional sage grouse habitat constraints for brooding and winter habitat.  Map 27 shows that VRM Class II management applies to existing leases. The leased areas along the Oregon, California, Pony Express, and Pioneer Trails, plus the Sublette Cutoff, and to the north of Cokeville are all examples of VRM Class II overlying existing leases.

Page 6 of 71Comments on Kemmerer draft RMP and DEIS

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
16.	4-30 4-34	Map 27	Correct DEIS and maps to show VRM Class II as a major constraint or remove the Class II due to underlying resource allocations.	As explained in previous comments, the VRM Handbook requires BLM to modify the VRM inventory classifications to fit the underlying land allocation. <i>Southern Utah Wilderness Alliance</i> , 144 (B.L.A. 70, 84 (1998)) ("[v]isual management objectives (classes) are developed through the RMP process for all Bureau lands. The approved VRM objectives shall result from, and conform with, the resource allocation decisions made in the RMP's." BLM Manual 8400 0-6A.2 (emphasis supplied).) An existing lease is a resource allocation, unless the lease is NSO. CLG members research shows that the affected leases are not NSO.
<b>Reasonable Foreseeable Development Scenario for Oil and Gas Kemmerer Field Office, Wyoming October 2006</b>				
17.		RFD Rept.	Revise 2006 RFD Report to reflect current development and pending applications.	The RFD fails to meet BLM guidance as to substance and format. IM 2004-89.

Page 7 of 71Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
18.	4-27 to 4-34		<p>Revise based on corrected RFD.</p> <p>IM 2004-89. At a minimum, the RFD must estimate level of activity over the life of the plan, Att. 1-3. The 2006 RFD does not take into account the pending Moxa Arch infield development and thus the projected number of wells and acres of surface disturbance are incorrect. The understatement is a material omission. Because the RFD understates current drilling activity, the RFD will not meet the other objectives set out in the IM, including:</p> <p>(1) Provide the RMP/NEPA process with information needed in the review and evaluation of existing management direction and alternatives for a land use plan or plan amendment.</p> <p>(2) Facilitate informed decisions on the management of oil and gas resources balanced with management of other resources.</p> <p>(3) Provide an effective tool to determine the need to update or revise the NEPA document upon which a management plan is based.</p> <p>RFD must also correlate wells to surface disturbance. The discussion in Chapter 8 does not conform to the forms provided in IM 2004-89.</p>

Page 8 of 71 Comments on Kemmerer draft RMP and DEIS

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
<b>Use of Administratively Unavailable Violates FLPMA §204 Procedures</b>			
19.	2-44 2-45	2009 2013	<p>Replace "administratively unavailable" with "withdraw" throughout RMP.</p> <p>Administratively unavailable is unlawful. BLM must follow §204 withdrawal procedures. See <i>Mountain States Legal Foundation v. Andrus</i>, 499 F. Supp. 383, 392-93 (D. Wyo. 1980) (deferring action on mineral lease applications pending RARE II violated §204 of FLPMA); <i>Mountain States Legal Foundation v. Hodel</i>, 668 F. Supp. 1466, 1474 (D. Wyo. 1987) (deferring mineral lease applications pending completion of EIS and land use plans violated Section 204); <i>Clayton W. Williams</i>, 103 IBLA 192, 206 (1988).</p>
	2-29		<p>For example, in addition to existing withdrawals, Alternative D withdraws developed campgrounds, the BLM-administered surface of the Bridger Antelope Trap, and areas with special status plant species, and the Cokeville Meadows NWR from operation of the mining laws.</p> <p>See Comment #*.</p> <p>BLM cannot deny access to privately owned mineral estate. <i>Duncan Energy v. U.S. Forest Service</i>, 50 F.3d 584, 589 (8<sup>th</sup> Cir. 1995), <i>aff'd</i> 109 F.3d 497, 500 (8<sup>th</sup> Cir. 1997). Nor can BLM unreasonably limit access to the private mineral estate.</p>
			<p>The change from deferred to administratively unavailable is still an unlawful <i>de facto</i> withdrawal. The local governments incorporate a memorandum explaining the law and precedent. See Ex. 1.</p>

Page 9 of 71 Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
20.		Map 57		Livestock grazing, rights-of-way permits, and RPPA leases are resource allocations incompatible with VRM Class II. BLM Handbook requires revision of the VRM classification to reflect other incompatible resource allocations.
21.	2-17		There are existing withdrawals from locatable mineral entry to protect oil shale, phosphate, and trona resources in the planning area. <b>These withdrawals are superseded because these resources are now subject to the Mineral Leasing Act.</b>	Oil shale, phosphate, and trona are leased not located.
	2-44	2011	Alt A allows leasing in fluid trail segments	This is inconsistent with VRM and no lease conditions

Page 10 of 71
Comments on Kemmerer draft RMP and DEIS

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
<b>Land Classified for Disposal: Pine Creek Ski Area Expansion</b>				
22.			Revise proposed Pine Creek SRMA to exclude Pine Creek ski area and expansion.	FLPMA calls for BLM to classify public lands for retention and those suitable for disposal. 43 U.S.C. § 1701(a)(1). Lands classified as suitable for disposal should be available under the RPPA, Desert Land Act, and for sale or exchange.
				FLPMA directs that public lands be managed to meet statutory objectives, including the Recreation and Public Purposes Act (RPPA), 43 U.S.C. § 869-1. The RPPA establishes the objective of transferring public lands to local governments to meet recreation and other local government services, such as airports, landfills, and government buildings. The RMP acknowledges that more than 59,508 (35,823 acres Alt D) are suitable for disposal. The DEIS fails to disclose the basis for reducing the lands identified as suitable for disposal. Appendix G omits the land for the ski area expansion.

Page 11 of 71
Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
	2-30		Disposal of BLM-administered lands under Alternative D are identified if they meet the disposal criteria, statutory policy and Kemmerer Field Office resource management goals, the same as alternatives A and C, but less acreage is potentially disposed. Additional parcels for disposal are considered on a case-by-case basis. Applications for Desert Land Entry are considered as described for Alternative A.
23.	2-71	LR: 1.2	<p>Work cooperatively with local governments to transfer parcels that meet criteria in Recreation and Public Purposes Act to ensure that local governments have adequate land for public facilities and services.</p> <p>RPPA authorizes the patent or lease of public land to local agencies for public facilities in recognition that federal land counties need land for public services. There is consistent national precedent conveying public land for recreation, e.g. BLM has approved more than 545 conveyances and leases to local governments in the last 20 years for a variety of uses including land fills, public schools, parks, open space land, and developed recreation areas. The RMP needs to incorporate the RPPA policy and to facilitate the expansion of the Pine Creek ski area.</p>

Page 12 of 71

*Comments on Kemmerer draft RMP and DEIS*

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
24.	2-79	6029	<p>The Pine Creek Canyon (excluding the land suitable for the ski area addition) would be a SRMA, with the objective of enhancing developed and undeveloped recreational opportunities while protecting the riparian, water, and wildlife values that exist in the area.</p> <p>The proposed SRMA conflicts with the expansion of the Pine Creek ski area and RPPA application. The RMP revision prejudices the application or erects barriers to the local government cooperation.</p>
25.	2-79	6029	Add Idaho residents to recreation market.
26.		Map 45	<p>Remove big star that obscures impact of SRMA.</p> <p>Map 45 Pine Creek obscures proposed SMRA boundaries and frustrates NEPA full disclosure obligations.</p>
27.	2-79		<p>Add the fact that access into SRMA is over county roads.</p> <p>Revise RMP to remove limit on snowmobile use to the groomed trail within Pine Creek.</p> <p>Travel limits restrict access two state sections within the Pine Creek Canyon by limiting travel to the main roadway</p> <p>To the extent that there are issues, they relate to an existing county road along the creek bed. Relocation of the road would mitigate this conflict and meet BLM management obligations as well as objectives</p> <p>Limits on snowmobile use creates a safety hazard because the Pine Creek Ski Patrol use snowmobiles on the ski area.</p> <p>Access limits restrict travel to state school sections.</p>

Page 13 of 71

*Comments on Kemmerer draft RMP and DEIS*

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
28.	2-80	6031	<p>The Pine Creek Canyon SRMA would be managed according to the following prescriptions:</p> <p>(1) Maintain and expand facilities to meet future recreation demand as they currently exist.</p> <p>(2) Restrict camping to areas outside of the riparian zone.</p> <p>(3) On developed recreation sites, unless specifically authorized, no person shall discharge firearms, other weapons, projectiles, or fireworks.</p>
			<p>As explained in other discussions, Lincoln County qualifies for patent for the land currently under lease as the Pine Creek ski area. It also qualifies for lease or patent for the proposed expansion.</p> <p>BLM has limited discretion to deny an application under RPPA. The application predates the RMP and the DEIS fails to disclose and document the basis to limit alpine ski recreation. The only conflict appears to be crucial winter habitat but neither elk or moose populations are at risk and skiing does not threaten wildlife. <i>Colorado Environmental Coalition v. Dombek</i>, 185 F.3d 1162 (10<sup>th</sup> Cir. 1998) (affirming ski area expansion into lynx habitat).</p>
29.	2-80	6031	<p>(4) The Pine Creek Canyon SRMA would be managed as VRM Class III H.</p> <p>(5) OHV use would be limited to the designated road. Snow machines are limited to the designated trail.</p>
			<p>Developed facilities and roads make it more suitable for Class III use. It is also adjacent to state school section. This is another example of VRM classifications failing to take into account resource allocations.</p>

Page 14 of 71

*Comments on Kemmerer draft RMP and DEIS*

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
30.	2-79	6031	<p>SRMA overrides ski area and interferes with county expansion.</p> <p>The proposed SRMA is inconsistent with county lease. BLM's commitment to work with local governments suffers credibility when it uses the RMP to block the ski area expansion. FLPMA requires BLM to explain the federal statutory basis for this action, since it contradicts local government plans. 43 USC §1712(c)(9). It also arbitrarily devalues improvements that the county has already made.</p>

Page 15 of 71

*Comments on Kemmerer draft RMP and DEIS*

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
31.	2-80		VRM II for ski area violates VRM criteria.	MS 8431 defines VRM Class II requires that any change be substantially unnoticeable.  Definition of Substantially Unnoticeable. Substantially unnoticeable means that an action must be so insignificant as to be only a very minor feature or is not distinctively recognizable by the average visitor as being human made or human-caused because of age, weathering or biological change. The Bureau's visual contrast rating process (BLM Manual Section 8431, and the Contrast Rating Worksheet, Form 8400-4) may be used as an aid in determining whether the impacts of a proposed action are substantially unnoticeable. Other analysis that could be used, include a viewshed or seen-area analysis and the use of ground and aerial photographs. In all cases a written narrative analyzing the potential visual impacts, both individually and cumulatively, must be provided.
32.	2-87	6045	Good to keep routes but are the claimed BLM roads county roads?	all of Pine Creek a county road. BLM cannot attempt to limit access or regulate public access.

Page 16 of 71Comments on Kemmerer draft RMP and DEIS

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
			<b>DEIS Fails to Fully Disclose Sage Grouse Habitat Management Terms and Costs</b>	
33.		General		NEPA and EPCA broadly define the disclosure obligations to include identification of the restrictions and fully disclose the cumulative effects. The DEIS fails throughout to accurately disclose the cumulative effects, especially on existing land uses, with respect to sage grouse habitat management. The entire planning area is covered by the timing restrictions but Map 25 only discloses leks and lek buffers, excluding areas outside the leks for brooding and foraging habitat and suitable occupied winter habitat.

Page 17 of 71Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
34.	2-63 2-64	4040	<p>Greater sage-grouse nesting and early brood-rearing habitats: Avoid surface disturbing and <b>disruptive activities</b> in suitable greater sage-grouse nesting and early brood-rearing habitats within 2 miles of an occupied lek, or in identified greater sage-grouse nesting and early brood-rearing habitats outside the 2-mile buffer from March 15 through July 15.</p> <p>• Greater sage-grouse winter habitat: Avoid surface disturbance and disruptive activities in occupied greater sage-grouse winter habitats from November 15 through March 14.</p> <p>Neither the DEIS nor the maps disclose the number of acres that would be included in the restrictions on brooding and foraging habitat and the restrictions on occupied winter habitat. Map 25 only shows known leks and buffers around leks. These last two restrictions are outside of the lek buffer and throughout winter habitat.</p> <p>The RMP does not address or quantify the impacts on existing uses, such as livestock grazing, operation of existing leases, and rights-of-way facilities. The winter habitat restriction on "disruptive activities" could shut down all winter sheep grazing in Uinta County. Grazing operations include herders, trucks, placement of water troughs, all of which move throughout the landscape.</p>

Page 18 of 71
Comments on Kemmerer draft RMP and DEIS

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
35.		General	<p>NEPA requires that the EIS fully disclose the impacts and fully disclose the scope of the regulation. EPCA requires full disclosure of the energy resources and energy transmission opportunity costs and burdens and document the basis. The RMP and DEIS fall far short, because these two restrictions will apply to the entire planning area. The failure to disclose is especially significant because the combined effect is to prohibit or restrict surface use more than 8 months of the year throughout the planning area.</p>
36.		General	<p>Recommend focusing on outcome based management, that is increasing the number of sage grouse and treating the habitat, as opposed to denying access. The status of the sage grouse and its habitat management remain controversial. The RMP fails to disclose that the sage grouse is still hunted, a significant fact, that may affect numbers.</p> <p>Case-by-case exceptions are more burdensome for livestock operator or for rights-of-way permittee than a major gas field, and yet same burdens are imposed without regard to the environmental significance of the proposed action.</p>

Page 19 of 71
Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11,2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
37.	2-63	4043	Locate facilities or reduce noise levels to 49 dB or less as measured 900 feet from the noise source to minimize the impacts of continuous noise on species relying on aural cues for successful breeding during breeding season.	Needs to be limited to breeding season.
38.	2-63	4042	Avoid new high-profile structures (higher than 12 feet) within 1 mile of occupied sagebrush obligate habitats unless anti-perch devices are installed. Address issue of guy wire collisions on a case by case basis if quality data establish that it is a direct threat.  Prohibit new high-profile structures relying on guy wires for support in these habitats. Exceptions can be made if NEPA analysis shows little or no impact to sagebrush obligate species.	Current data do not support prohibition. Support for control of ravens and other predators would provide greater benefits.
39.	2-62 & 2-63	4040	Revise Maps 25, 26 and 27 Alt B to show the brooding and the winter habitat affected.	The DEIS maps are misleading and understate the scope of the restriction. Poorly written direction only adds to the confusion.

Page 20 of 71

*Comments on Kemmerer draft RMP and DEIS*

OCTOBER 11,2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
<b>Travel Management: Need to Incorporate County Road System</b>				
40.	2-82		<b>Goal TR Work with local governments to address and resolve road jurisdiction and R.S. 2477 issues before initiating road closures and OHV limits on roads and trails.</b>	Recent policy changes recognizing the Tenth Circuit decision in <i>SUWA v. BLM</i> , establish new direction with respect to recognizing county roads. Appendix I adopts various road closures without identifying any of the roads and without resolving county road issues.  County road systems are excluded from RMP even though Lincoln County made the information available in 2005 and again in 2006. The omission of county roads is material due to issues of public access, OHV and recreation access, and recurrent but unidentified road closures. Because these roads are a matter of public record, BLM must include the information and disclose current access. See also Letter of Lincoln County to Ms. Rugsvell regarding road closures.
41.	2-82	6032	<b>(3) Pursue opportunities to reclaim existing roads (excluding county roads) that are not necessary to attain management objectives.</b>	BLM cannot reclaim a county road and jurisdiction over roads has not been resolved.

Page 21 of 71

*Comments on Kemmerer draft RMP and DEIS*

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
42.	2-85	6039	<p>The RMP does not make travel management decisions. The RMP, and Appendix I, adopt broad policy objectives, but nowhere does either document address travel needs or existing routes. Thus there is insufficient data or information to make travel management decisions.</p> <p>If the ROD is to be used to close all roads in the area, BLM must inventory roads and trails and assess their role, which has not been done. IM 2-6-173, Att. 2 BLM is still developing guidance and an action plan. The RMP does not document the access needs, loss of access, or the BLM and public roads and trails that will remain open. 43 C.F.R. §8342. The counties are trying to work with BLM but preemptive road closures frustrate the efforts of CLG members to cooperate, and inject confrontation inappropriately.</p>

Conduct travel management planning in compliance with the management decisions to meet the management objectives identified in this RMP. TMAs identified for completion of travel management plans within one-year of when the record of decision is signed for this RMP: Pine Creek Canyon, Raymond Mountain WSA. TMAs identified for completion of travel management plans within five years of the ROD: Rock Creek/Tunp MA, Dempsey SRMA, and the Moxa Arch oil and gas development area. TMAs identified for completion of travel management plans within ten years of the ROD would include Leavitt Bench/Crooked Canyon area and Oakley Draw.

Page 22 of 71

*Comments on Kemmerer draft RMP and DEIS*

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
43.	2-86 3-126	6040	<p><b>Same as Alternative B except an average of 2 miles of open road per square mile will not be exceeded. Same as Alternative A.</b></p> <p>Delete decisions on winter closures until BLM develops supporting record.</p>
44.	2-88	6045	<p>OHV closures affect weekend recreation disproportionately, e.g. Green Hill and Commissary Ridge. BLM should consider alternative of rehabilitation to allow for convenient OHV recreation and meet recreation access needs.</p>
45.	2-88	6048	<p>The Raymond Mountain WSA is open closed to snow machine use.</p> <p>The cross-country ski trail is closed to snow machine use.</p>

The open road per square mile is based on the erroneous assumption that roads are always bad for wildlife. As shown in the Taylor work provided earlier, elk and other game animal avoidance is due to the association of hunters with roads and that non-threatening travel and road use does not have disruptive impacts. Antelope benefit from roads during winter since roads are plowed and they can move more easily to better browse.

IMP allows snow mobile use and this is a legitimate recreation activity.

Page 23 of 71

*Comments on Kemmerer draft RMP and DEIS*

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
46.	2-88		<p>Delete proposed Dempsey Ridge SRMA backcountry byway.</p> <p>This is a Lincoln County road and the county has never agreed to the Back country Byway. When initially proposed the county commissioners were interested until BLM insisted that the county assume all road upgrade and maintenance expenditure. BLM cannot designate a byway without county approval since it has no jurisdiction over the road. The assessment of VRM Class 11 for all of the proposed byway adds another important reason to object to the byway.</p>
47.	2-88		<p>Revise RMP to provide for comprehensive travel management planning within 5 years.</p> <p>Travel management plans must be completed within 5 years. As point out above, single area travel management planning fails to address regional access needs and linkages.</p>
48.	2-88	6046	<p>Delete proposed road and trail closures in Raymond WSA.</p> <p>DEIS fails to document the basis for road and trail closures, impacts on recreation access, demand for recreation access, etc. IMP authorizes motor vehicle travel, OHV as well as other vehicles, on existing roads and trails. H-8550-1, ¶ 1, p.16. Closure of unroaded areas to OHV may be appropriate, <i>Id.</i> but the RMP does not make case for complete closure.</p>

Page 24 of 71
*Comments on Kemmerer draft RMP and DEIS*

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
49.	2-88	6046	<p>Delete snowmobile closures and develop separate decision document supporting closure and considering alternatives.</p> <p>DEIS fails to make a case for banning snow mobiles in much of the WSA and expanded area. Just as is true with snowmobiles in the Teton National Park, this decision is not documented nor developed to be supportable.</p>
50.	2-88	6045	<p>Same as Alternative A, except designate as a new motor vehicle route the Pine Creek Canyon road from the end of Lincoln county Koau TZZU in IZDrs, K1 low, section 1D to the Uraa boundary.</p> <p>Lincoln County owns the segment claimed by BLM. Under recent policy changes, BLM cannot designate a county road or regulate its use or maintenance. IMs, 2006-159, 2006-161; Departmental Implementation of <i>Southern Utah Wilderness Alliance v. Bureau of Land Management</i>, 425 F.3d 735 (10th Cir. 2005); Revocation of January 22, 1997, Interim Policy; Revocation of December 7, 1988, Policy (Norton R.S. 2477 Policy) (March 22, 2006).</p>
51.	2-88	6043	<p>OHV restrictions should be in travel plan; DEIS does not discuss relevant information to close existing roads and trails, most of which are not shown or identified. This applies also to issue of recreation access.</p> <p>DEIS does not meet criteria imposed in IM-2006-173 and thus the proposed travel management decisions fail to conform to agency guidance.</p>

Page 25 of 71
*Comments on Kemmerer draft RMP and DEIS*

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
52.	2-89	6050	Revise for documentation of demand for OHV use and need.	There is no evidence that this meets OHV recreation demand. The RMP also fails to recognize restrictions denying grazing permittees, well services companies, and lessees access to maintain facilities. Because the RMP does not identify roads or trails being closed, the maps do not display roads and trails, it is impossible to meaningfully comment.

Page 26 of 71
Comments on Kemmerer draft RMP and DEIS

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
<b>Improper Assignment of VRM Classes</b>				
53.	2-43	General	Revise VRM classification to take into account resource allocations.	See comment #7. As noted in Comment #**, the RMP does cover existing leases in VRM Class II.
54.	2-90	6033	Revise to conform to cultural resource management procedures. Reconsider SRMA given inability to access private land and to manage private land segments	RMP adopts undertaking criteria without following the process. DM8140.06. It assumes that all of the areas listed are equally important and equally sensitive in all cases throughout the 1-mile buffer. The planning criteria for cultural resources protection, which is the basis for the VRM Class II assignment does not meet criteria found in §130.14. The RMP assumes that each trail segment or remnant is equally important and equally sensitive. The BLM guidance requires that the person imposing this protection also assess the uniqueness of the site. The RMP treats all sites as equally important and equally sensitive. This is not consistent with BLM guidance for planning or for undertakings.

Page 27 of 71
Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
				<p>"In establishing management objectives, the relative importance and sensitivity of known and anticipated cultural properties should be considered, not simply their geographic distribution and density. Simple density is not necessarily a measure of the importance of cultural properties or the magnitude of potential conflicts. In establishing management objectives, the relative importance and sensitivity of known and anticipated cultural properties should be considered, not simply their geographic distribution and density. Simple density is not necessarily a measure of the importance of cultural properties or the magnitude of potential conflicts." DM 8130.14.A.</p>
55.	2-91	6052	<p>Revise all visual corridors and assignment of VRM Class II to conform to guidance. Reconsider segments along NHTs, especially those in Check board to conform to cultural resource guidance, DM 8130.14 and 8140.06.</p>	<p>See Comments #7 and 66.</p>

Page 28 of 71

*Comments on Kemmerer draft RMP and DEIS*

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
56.	2-89 2-90	6052	<p>Reconsider size of VRM Class II assignments.</p>	<p>Visual corridor in Checkerboard cannot be managed without unlawfully regulating private land.</p> <p>The rationale to authorize this under "sight, sound, and sense of place" policy, 36 C.F.R. §800.1, fails to follow BLM guidance. DM 8130.14 requires documentation of the site or cultural resources relative importance and then assessment of sensitivity. A blanket VRM Class II cannot be imposed absent documentation of significance and sensitivity, both of which are absent. RMP needs to be revised to conform to DM 8130.14.</p> <p>Class II VRM objective directly conflicts with existing allocations for oil and gas development and other uses. As adopted, the RMP would make even vegetation management difficult to approve.</p>

Page 29 of 71

*Comments on Kemmerer draft RMP and DEIS*

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS  
COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County,  
Sweetwater County Conservation District, Uinta County, Uinta County Conservation District

Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
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57.	2-90	6052	The northwest portion of the planning area north and east of U.S. Highway 30 (excluding the Raymond Mountain WS A and the industrialized area west of the city of Kemmerer). This area is defined in consideration of sensitive NHTs and cultural sites; scenic views from highways and Fossil Butte National Monument; scenic views from high recreational use areas (e.g., Pine Creek ski area) and current high-quality scenery.	The analysis seen by the local governments showed that this area classification suffered from "lumping" in that all of the land was owned by BLM but not all of the land qualified as VRM Class II. VRM Class II is not intended to be land preservation but a scenic prescription along roads, and overlaying specific sites. This VRM includes the Pine Creek ski area and would limit if not prohibit any new structures. CLG members strongly object to inclusion of the ski area.
58.	2-90	6052	The Star Valley area in consideration of current high-quality scenery and views from sensitive highways.	Same as above, lumped, which contradicts BLM policy. The RMP classifies all public land as VRM Class II even though much of the land area is not visible from sensitive highways.

Page 30 of 71 Comments on Kemmerer draft RMP and DEIS

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS  
COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County,  
Sweetwater County Conservation District, Uinta County, Uinta County Conservation District

Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
59.	2-91	6050	A visual corridor extending up to 1 mile on either side of the Oregon/California Trail in blocked federal lands south of U.S. Highway 30 and west of U.S. Highway 189 (Dear River Divide area). The federal sections containing high NHTs segments, the federal section that contains the Dridger Antelope Trap, and select federal sections within 3 miles of the Dridger Antelope Trap that exist within the checkerboard land pattern. These areas are defined in consideration of sensitive NHTs and cultural resources and views from NHTs and cultural areas.	The visual corridor for up to 3 miles on either side of State Highway 414 and County Road 283 in Uinta County in consideration of scenic roadway views.
60.	2-90-91	6050	The visual corridor on federally administered lands extending up to 1 mile on either side of the Mormon-California-Pony Express Trail south of 1-80 and east of Musselman Draw in Uinta County. The area is defined in consideration of sensitive NHTs and cultural resources views.	See Comment #49.

Page 31 of 71 Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11, 2007

**COMMENTS ON KEMMERER DRAFT RMP & DEIS**  
**COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District**

Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
61.	2-89 to 2-92	6052	Preserve the viewshed within 3 miles of the Bridger Antelope Trap juniper fence, where the visual characteristics of the setting are uncompromised by modern intrusions, by managing projects in federal sections to retain the existing character of the landscape so developments do not dominate the visible area to detract from the feeling or sense of the historic time period of the site. The area is not suitable for ROW corridors or other developments containing high-profile structures (higher than 12 feet), particularly wind power. 1. The management action is intended to manage developments to maintain setting qualities and not to have an exclusion zone. Same As alternative A.	Juniper fence is located on private land. This condition impinges on private land rights.
62.	2-90	6052	Classify Raymond WSA VRM Class II	Class I will not allow vegetation management and is not consistent with IMP 31-8350-1 if 17, p. 17 (substantially unnoticeable). The classification contradicts protection of land uses and valid existing rights under nondegradation standard, 43 U.S.C. §1782(c), which is the reason that Class II not Class I was originally adopted.
63.	2-90	6052		Class II cannot impose viewshed from town. BLM does not regulate land uses in Kemmerer.

Page 32 of 71 Comments on Kemmerer draft RMP and DEIS

OCTOBER 11, 2007

**COMMENTS ON KEMMERER DRAFT RMP & DEIS**  
**COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District**

Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
64.	2-90	6052	Revise buffers to exclude county rights-of-way.	SH 14 is affected but not shown. Management is inconsistent with county right-of-way cannot impose scenic limits on county 66' right-of-way.
65.	2-90	6052	Revise visual buffers to % mile along all NHTs.	See Comments #7 & 49 above.
66.		6053	Revise viewsheds to conform to VRM analysis and assignment procedures and to protection of cultural resources analysis to the extent the policy is to apply undertakings criteria.	The additional viewsheds along trail segments are adopted without conforming to Class II VRM procedures (modify VRM inventory class to fit resource allocations). Because they are based on protection of cultural resources in the historic trail segment, BLM must also document the DM §130.1 process. See Comment #49. Violates VRM procedures as well. Comment #9.
67.	2-92	6054	Revise to provide for protection of visual elements and cultural resources in accordance with DM 8140.06.	See Comments #49, 9. RMP prejudices all future undertakings. Because RMP does not consider resource allocations, it cannot be enforced.
68.	2-93	6055	Revise per above comments.	See Comments #49.

Page 33 of 71 Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11,2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
<b>Habitat Management Conflicts With FLPMA Principal Use Management</b>			
69.	2-50		<p>Revise Goal BR 1 to be defined by site potential.</p> <p>The discussion of biological resources almost entirely omits role of livestock grazing. As a consequence, the RMP would manage vegetation, soil, and water solely for fish and wildlife habitat. This is inconsistent with harmonious management of principal multiple uses (livestock grazing and fish and wildlife habitat), importance of grazing as a principal multiple use, and fails to meet NEPA obligation of full disclosure of impacts and issues to facilitate sound decisions.</p>
70.	2-50		<p>BR1: 8 Vegetation, soil, and water resources will be managed "to provide for the orderly use of the public grazing lands and to stabilize the livestock industry dependent thereon." and to improve and conserve rangeland resources 43 U.S.C. §315, 48 Pub. L. 1269.</p> <p>FLPMA requires that public lands be managed in accordance with statutory objectives set forth in FLPMA and other laws, 43 U.S.C. § 1702(b). The Taylor Grazing Act and Public Rangeland Improvement Act both provide for management of vegetation resources to improve rangeland health and to provide forage for livestock grazing. Thus the biological resources section of the RMP cannot be dedicated solely to fish and wildlife habitat. It must also reflect the direction found in these other laws.</p>

Page 34 of 71
Comments on Kemmerer draft RMP and DEIS

OCTOBER 11,2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
71.	2-50		<p>Goal B.R.3 Manage for the biological integrity and habitat function of terrestrial and aquatic ecosystems to <b>support livestock grazing</b> and sustain and optimize distribution and abundance of all native, desirable normative, and special status fish and wildlife species consistent with habitat capability.</p> <p>Livestock grazing relies on and supports habitat function and must be included here. Otherwise, the plan is removing a major multiple use from the landscape contrary to FLPMA mandates.</p>
72.	2-50		<p><b>Additional vegetation management actions will be initiated to address threats to forest health due to disease and pest infestations.</b></p>
73.	2-51	Goal BR4	<p>Manage or restore vegetation and habitat on BLM-administered lands within the planning area to facilitate <b>continued livestock grazing</b> and the conservation, recovery and maintenance of populations of native, desirable non-native, and special status species (BLM sensitive species, WGFD NSS 1-3 species, USFWS listed, proposed, or petitioned species) consistent with appropriate local, state, and federal management plans.</p> <p>Vegetation management should not be solely <b>focused on habitat for wildlife species. Grazing is a major multiple use, equal to and not secondary to, fish and wildlife.</b></p>

Page 35 of 71
Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
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74.	2-51	BR 3-5-1	<p><b>So long as consistent with Wyoming Standards for Healthy Rangelands and without displacing</b> livestock grazing, manage habitat to support Wyoming Game and Fish Department (WGFD) in the attainment of their big game herd unit objectives, strategic population plans, the Strategic Terrestrial Plan and the Aquatic Habitat Plan, to support well-distributed, healthy populations of fish and wildlife species consistent with WGFD's Comprehensive Wildlife Conservation Strategy (CWCS), and to achieve the stated purpose of designated Wildlife Habitat Management Areas.</p> <p>This objective displaces healthy range standards and authorizes BLM to cancel grazing if WGFD increases herd levels to the point that grazing must be reduced or eliminated to meet rangeland health objectives. It also delegates to WGFD habitat management and to displace public land management with state wildlife objectives. This contradicts law and policy. It also contradicts county land use plans and conservation district plans and policies.</p> <p>As explained in previous correspondence, BLM compliance with the MOU to the extent that it adopts without question game populations and habitat management constitutes an unlawful delegation of its authority. FLPMA requires BLM to manage habitat. The agreement in advance to adopt WGFD objectives and plans on BLM land <i>without regard to the consequences to other statutory uses and legal rights</i> abdicates BLM authority. It also displays a significant bias. Because these game populations have significantly increased during the previous planning cycle, there is no risk to these animals.</p>

Page 36 of 71
Comments on Kemmerer draft RMP and DEIS

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
75.			<p>The response that it has been approved by the Washington office does not address the extent to which BLM is delegating its authority to a state agency. The delegation of water right management to a state water conservation agency was recently set aside in <i>High Country Citizens Alliance v. Norton</i>, 03-7112(D, Colo. 2006).</p> <p>The change to incorporate the 1990 MOU under which BLM commits to meeting WGFD fish and wildlife objectives and managing consistent with agency plans, regardless of consequences, also violates the non-delegation doctrine. The local governments made this comment several times and the responses do not address the issues raised.</p>
76.	2-50	BR 3-5-2	<p><b>Avoid Ensure that no greater than 12.5 percent net loss</b> of crucial habitat acres occurs in the planning area over the life of the plan in the absence of and <b>encout</b> age voluntary offsite mitigation; <b>avoid</b> and ensure <b>no net</b> loss of crucial habitat function occurs in the planning area for any special status species.</p> <p>There is still no definition of crucial habitat or what is "loss of habitat function." The 12.5% needs to be documented. Previously the IDT admitted it had no basis to support the 12.5% other than a starting point for discussion. This management objective fails to meet Data Quality Act standards.</p>

Page 37 of 71
Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
77.	2-50	BR3-5.5	Inventory, map, and correlate vegetation types and serai stages within the planning area and develop and implement management actions to provide healthy and stable ecosystems that support livestock grazing levels and wildlife habitat values, appropriate species' habitat needs, and the existing species' diversity.  If BLM commits to maintaining WGFD population objectives it must also commit to meeting AUM levels.
78.	2-50		BR: 6.4 BR:7.4 Coordinate with Wildlife Services prior to activities on the planning area to avoid non-target species mortalities, to facilitate pest and predator control, and to reduce and minimize disturbance to fish or wildlife during the life of the plan.  Wildlife services provide essential protection for sensitive species, i.e. sage grouse.
79.	2-53	4007	Assist authorized agencies in the restoration, reintroduction, augmentation, or re-establishment of threatened, endangered, and other special status species populations and (or) habitats after assessing habitat capacity and impacts.
80.	2-53	4009	Bald eagle no longer listed.

Page 38 of 71

*Comments on Kemmerer draft RMP and DEIS*

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
81.	2-53	4011	Revise to conform to Wyoming Standards for Healthy Rangelands <i>Healthy Rangelands</i> An adaptive management approach will be followed to achieve the minimum goal of riparian vegetation and hydrological function for proper functioning condition in all riparian-wetland areas. Information gathered from assessments of riparian areas using the Proper Functioning Condition Assessment Methodology (Pridard 1998) will be used to identify attributes and processes that are not in a working order. Sites specific management strategies will be collaboratively designed and implemented to correct these. Monitoring will be conducted to identify any changes in management necessary to establish and maintain an upward trend. Based on this information, refinements in the management strategy will be implemented as necessary and monitoring continued. This iterative process provides the flexibility to ensure that management quickly and effectively responds to resource needs, thus ensuring that resource objectives can be met and maintained even in the face of seasonal, annual, and cyclic events such as fire, insect infestations, disease, weather, and associated hydrologic events that are beyond human control.  RMP adopts PFC as the standard when it is only the methodology.  <i>Wyoming Standards for Healthy Rangelands</i> states:  Standard #2 Riparian and wetland vegetation has structural, age, and species diversity characteristic of the stage of channel succession and is resilient and capable of recovering from natural and human disturbance in order to provide forage and cover, capture sediment, dissipate energy, and provide for groundwater recharge.  It is explained as follows: "Wyoming has highly varied riparian and wetland systems on public lands. These systems vary from large rivers to small streams and from springs to large wet meadows. These systems are in various stages of natural cycles and may also reflect other disturbance that is either localized or widespread throughout the watershed."

Page 39 of 71

*Comments on Kemmerer draft RMP and DEIS*

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
			PFC was originally developed for perennial streams. Wyoming's cold desert location requires very different criteria than what is found in PFC as described in technical manuals. The Wyoming standard makes it clear that riparian area vitality is not measured by green line, willows, and other vegetation which will not grow in alkaline soils.
82.	2-53	4005	Criteria would impose additional obligation to mitigate for fish and wildlife, with lesser obligation to mitigate for vegetation impacts that affect grazing forage.
			Manage siting of facilities to <b>minimize reduce</b> impacts on fish and wildlife habitat function and quality, to <b>reduce impacts on vegetation resources for all uses</b> , and to <b>minimize reduce</b> fish and wildlife mortality during the life of the facility.
83.	2-53	4012	As defined, the standard will preclude sheep grazing on winter range, well services operators maintaining oil and gas operations, and all other lawful activities. It is overbroad and undocumented. Without definition of avoid, and exclusion for valid existing rights and valid authorizations pursuant to permits, this is an unenforceable standard that cannot be justified. Term is vague, overbroad, and unsupported by data.
			Avoid <b>directly threatening</b> disruptive activity in big game crucial winter range November 15 to April 30.

Page 40 of 71
Comments on Kemmerer draft RMP and DEIS

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
84.	2-58	4028	Fences are a critical management tool and use of the verb remove is not appropriate unless there is no adverse impact on range operations. BLM must consult, coordinate and cooperate with grazing permittees. 43 C.F.R. §4120.2, 4120.3-3, 4120.3-8. Given lack of funding for needed range projects, this is unlikely to be achieved and of questionable merit.
			<b>Subject to coordination, consultation, and cooperation with the affected livestock grazing permittee, modify</b> Remove or modify all BLM fences to comply with BLM Manual 1741 fencing standards to eliminate potential conflicts with wildlife and special status species, except <b>change</b> eliminate or modify existing fences to reduce conflicts where <b>opportunities exist to do so without impairing range management objectives and livestock operations on a case-by-case basis.</b>
85.	2-59	4029	This issue needs to include permittees and landowners. Most migration corridors include private land. Migration corridor management will only work if BLM will involve private landowners.
			<b>Identify and work collaboratively with livestock permittees and landowners as well as cooperators to develop management of migration corridors for big game wildlife species and migratory birds to reduce conflicts where appropriate opportunities exist.</b>
86.	2-54	4013	Native plants do not establish on each site within 3 years; One option previously rejected is to use a mix of native and nonnative plants to stabilize soil, and provide forage, and then allow native plants to establish and fill in.
			Modify 3 year term for reclamation, not physically possible

Page 41 of 71
Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
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87.	2-59	4028	Delete requirement to bury power lines.	BLM cannot require this, governed by Wyoming Utilities Commission or FERC. It is also cost-prohibitive.
88.	2-61	4035	Revise limits on vegetation treatments, fail to focus on benefits to be gained.	Vegetation treatments conditioned on no impact rather than direct benefit
89.	2-62	4038	Delete or describe the management actions.	Insufficient information, it does not describe a management action and does not disclose what that action might be or the impacts.
90.	2-63	4042	Separate exceptions to all conditions so they are tailored to predator risk.	Ravens and coyotes and foxes
91.	2-63	4043	Delete "disruptive activities."	Like proposed prohibition in winter habitat, the prohibition on disruptive activities would limit livestock grazing, and other activities authorized under permit without any evidence of action harm. This is especially true for raptors.
92.	2-63	4044	Define avoid, quantify impacts of avoidance for management of pygmy rabbit	There is no map showing where pygmy rabbit habitat is.

Page 42 of 71
*Comments on Kemmerer draft RMP and DEIS*

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
93.	2-64	4047	Aerial application of chemicals would not be allowed within 1/2 mile of wetlands, riparian areas, and aquatic habitats, <b>except when necessary for public health and safety.</b>	RMP would prohibit spraying for mosquitoes, which is contrary to public health standards. Prohibiting spraying for mosquitos will increase West Nile Virus mortality for sage grouse.
94.	2-87	6044	Adopt Alternative A.	The 300' rule means operators cannot drive to well, livestock grazing permittees cannot readily maintain improvements, sheep herders cannot operate, and puts significant burden on numerous public land activities from hunting, predator control, transmission line maintenance. This list goes on. Requiring "permission" each time is unduly burdensome. DEIS does not document the need and this issue is better addressed in travel management when there are facts rather than generalized concerns.

Page 43 of 71
*Comments on Kemmerer draft RMP and DEIS*

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
<b>Special Management Areas</b>			
95.	2-31	2.4.4.4	Adopt Alternative A, and redo WSRA Study separate from RMP. Alternative D as proposed does not conform to BLM guidance and should not be adopted.
96.			Remove VRM Class I for Raymond WSA and replace with VRM Class II. IMP provides for VRM Class II not VRM Class I. IM upon which BLM relies is outdated and IMP never amended. The IMP controls.
97.	2-79	6031	See Comments ##**.
98.	2-81	6033	Adopt Alternative A. Oregon Trail SRMA is problematic given extent of leases, private land, livestock grazing, and failure to accurately disclose the extent of the trail until recently. BLM cannot manage it as a discrete recreation area due to lack of access across private lands, lack of authority to attempt to condemn access. <i>Leo Sheep Co. v. United States</i> , 440 U.S. 668 (1979). Protection for trail segments on public land is already protected by NHT designation.

Page 44 of 71
Comments on Kemmerer draft RMP and DEIS

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
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99.	2-81		DEIS omits adverse and significant impacts on landowners including Western Wyoming Range Limited Partnership. As documented in their comments of October 10, 2007, BLM has failed to consult or cooperate with them and has further failed to address adverse impacts on sheep operations.
100.	2-83	6034	Alternative A. Lincoln County has not agreed to the proposed backcountry byway and it is a county road over which BLM has no jurisdiction. SRMA classification precludes timber removal which is necessary to avoid catastrophic fires. DEIS fails to address point of SRMA management without also addressing epidemic levels of beetle kill. DEIS 3-46. Amount of private land and inholdings also makes the SRMA a really poor idea. Proposed road closures without addressing county roads and landowner rights of access are also problematic.

Page 45 of 71
Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
<b>Areas of Critical Environmental Concern</b>				
101.	2-95		Identify areas for other management that face <b>imminent and irreparable threats</b> and possess unique resource values.	Conforms to definition of ACEC, 43 U.S.C. §1702(a); 43 C.F.R. §1601.1- <sup>9</sup>
102.	2-95	7002	Alternative C.	RMP fails to adequately document basis for continuing ACEC. The ACEC report does not identify any threat to resources. All of the resources cited in the checklist are ubiquitous throughout western Wyoming and are not nationally or regionally significant. Elk winter range, avalanches, sensitive species habitat are found throughout the KFO planning area.
103.	2-95	7004-7007	Delete RMP provisions calling for ACEC designation where sensitive plant species are found.	RMP does not allow <i>carte blanche</i> to declare ACEC for plant habitat without following plan revision rules. Nothing in the record supports the regional or national significance of sensitive plant communities. There is no boundary, no map and no basis for the threat, since already protected as a sensitive species. Even BLM checklist does not support ACECs.

Page 46 of 71
*Comments on Kemmerer draft RMP and DEIS*

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
104.	2-97 2-98	7014	Alternative A	Rock Creek Tump ACEC does not meet criteria. There is no showing of threat of irreparable harm to resources. ACEC report does not identify the resources as being nationally or regionally significant. ACEC designation by itself is not a basis to close lands to mineral development. The only unique resources are fossil bed and fossil lake which are separately protected under ARPA.
				The management prescriptions bear no relation to the unique resources but instead refer to habitat management and <i>de facto</i> withdrawal of the area. Management as an "area of significant resource concern" when record does not support ACEC or significant resources cannot be supported. The DEIS does not explain why the extensive management standards are not sufficient.
105.	2-98 2-99	7015	Alternative A	The defects in rationale described for Rock Creek Tump apply here. <i>See also</i> ACEC Report (unnumbered pages). Wildlife habitat and species found throughout planning area. Much of the area is already leased as well.

Page 47 of 71
*Comments on Kemmerer draft RMP and DEIS*

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
<b>Wild &amp; Scenic Rivers Study: H-8351 Requirements</b>				
106.	2-100 2-101	NWSR Study	Sever WSRA proposals from RMP due to failure to follow DM 8351 and lack of adequate public involvement.	The WSRA study predated the planning effort by more than 18 months. The 2002 NWSR report was never put out for public comment. Instead BLM erroneously assumed that scoping was sufficient. To show the lack of sufficiency, BLM did not modify the report even though it did receive documentation of diversion structures on Raymond Creek and lack of flows. This violates BLM guidance regarding obligation for public comment on both eligibility and suitability decisions. DM8351.
				This same issue was raised by the BLM Washington Office and the KFO incorrectly stated that there was separate public comment. This is inaccurate. WSRA study A-1 (noting eligibility review had no public comment). The final study was released and remains unchanged since January 2002.
107.	3-135 3-136		2002 WSRA Study must be redone to conform to DM 8351.	Discussion discloses that the study included ephemeral and intermittent streams. BLM guidance limits WSRA review to permanent flowing streams. IM 2004-196.

Page 48 of 71
Comments on Kemmerer draft RMP and DEIS

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
108.	2-100 2-101	NWSR Study	Segments not clearly eligible.	The 2002 NWSR study ignores impoundments that make both Raymond and Huff Creeks ineligible. River segments are "free-flowing," if "existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. ..." 16 U.S.C. § 1286(b); DM 8351.31 IEA, B. See Frank Hobbes Deed displaying diversion structures. See also Scoping Comments of Erick W. Esterholdt.
109.	2-100 2-101	NWSR Study		2002 NWSR Study assumes that these segments are free-flowing without any information regarding water rights and related diversion and development, which would affect those flows. Research of the State Engineer's records will probably show significant water rights that are appropriated but which could be further developed. The assumption that these river segments are free-flowing is likely inaccurate

Page 49 of 71
Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
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			Recommended Change	Discussion
110.	2-100 2-101	NWSR Study	Redo NWSR Study separate from RMP.	The manual identifies 14 suitability criteria. DM 8351.33.A.2. The 2002 WSRA study does not address impacts on existing water rights, omits documented water diversion structures, consistency with state and local plans, support (or lack thereof) by state and local governments, congressional support, and coordination with affected state and local government agencies.
111.	2-100 2-101	NWSR Study	Water diversion structures are located on Raymond and Huff Creeks and were not considered.	Construction of facilities typically related to exercise of water rights is prohibited. DM 8351.32.C.2; DM 8351.33.A.2. The attached map documents existing water diversion structures. Tab 4.

Page 50 of 71
Comments on Kemmerer draft RMP and DEIS

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
112.	2-100 2-101	NWSR Study	2002 WSRA study does not address existing water diversion structures or limits on future structures and facilities.	Similar prohibitions apply to scenic and recreation rivers. DM 8351.51.B.2 "No development of hydroelectric power facilities would be permitted. Flood control dams and levees would be prohibited. <b>All water supply dams and major diversions are prohibited.</b> Maintenance of existing facilities and construction of some new structures would be permitted provided that the area remains natural in appearance and the practices or structures harmonize with the surrounding environment." DM 8351.51.C.2.b (allows existing dams and maintenance of the dams so long as natural appearance is maintained).

Page 51 of 71
Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
113.	2-100 2-101	NWSR Study	<p>DEIS does not identify limits on other structures and facilities.</p> <p>BLM received scoping comments identifying water rights in Raymond Creek but study never revised.</p> <p>WSRA Study App. D lists prohibitions but does not identify the existing uses and structures.</p>	<p>In all three classes of WSRA study classifications, rights-of-way to divert water are either prohibited or discouraged and are limited to existing rights-of-way. DM 8351.51.A.2.i. ("New transmission lines, natural gas lines, water lines, etc., are discouraged unless specifically authorized by other plans, orders or laws. Where no reasonable alternate location exists, additional or new facilities shall be restricted to existing rights-of-way."). DM 8351.51.B.2.i; DM 8351.51.C.2.L. Thus, WSRA classification will directly affect the exercise of water rights and BLM must consider those impacts as part of the planning process.</p> <p>Right of the owner of a valid existing water right to make changes in water flows and structures precludes a finding of suitability. DM 8351.24, 8351.32.C. 1.</p> <p>Valid existing rights entail rights of diversion and yet as shown above, all of the WSRA classifications prohibit "major diversions" and facilities and structures and "discourage" water lines.</p>
114.	2-100 2-101	NWSR Study		

Page 52 of 71
*Comments on Kemmerer draft RMP and DEIS*

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
115.	2-100 2-101	NWSR Study		<p>Foreseeable uses of the land. DM 8351.33.A.3. The discussions almost never address existing and foreseeable uses of the land. For instance, the areas are generally subject to a grazing permit, and yet there is no discussion of water diversion needs for the permit or other management actions that might affect the natural appearance, and the water body and adjacent stream bank.</p>
116.	2-100 2-101	NWSR Study		<p>Local and state and congressional delegation support for WSRA designation. DM 8351.33.A.10. The reports are entirely silent on support or, in most cases, the opposition to WSRA designation.</p>
117.	2-100 2-101	NWSR Study		<p>Valid existing rights. DM 8351.33.A.11. There is never any discussion of valid existing rights, particularly water, rights-of-way, or other rights that would conflict with management of a WSRA segment.</p>
118.	2-100 2-101	NWSR Study		<p>Consistency with state and local plans. DM 8351.33.A.12; 43 U.S.C. §1712(c)(9).</p>

Page 53 of 71
*Comments on Kemmerer draft RMP and DEIS*

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
119.	2-100 2-101	NWSR Study		Coordination and consultation with other agencies and publics affected. DM8351.33.B. This would include consultation with the state engineer's office, local water conservation and irrigation districts, and other related agencies and entities
120.	2-100	7016	Revise analysis entirely to conform to factors identified in BLM WSRM manual.	Wild & Scenic River suitability analysis is flawed for failure to address the criteria set out in the manual MS-8351. CLG concurs with comments from Washington Office. Long (#409) ? who cites BLM Manual 8351 and writes that the "the no-action alternative is interim management for eligible segments, the other three alternatives could be designation, no designation, or a combination of designation and/or no designation. So, on page 2-98, records 7016 and 7017, you need to rewrite most everything, starting with the no-action alternative."
121.	2-100 2-101	NWSR Study	Quantify affected water rights on Huff and Raymond Creeks to document whether these rights will override BLM management and suitability recommendations.	

Page 54 of 71 Comments on Kemmerer draft RMP and DEIS

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District				
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
<b>Consistency with Local Government Plans &amp; Policies</b>				
122.	2-103		Social and Economic Issues	See Tab 3, Discussion of social and economic issues.
123.	2-48	Goal FR-4	Coordinate with local agency fire departments and officials in fire suppression and response.	HFRA mandates coordination with local agencies and that should be a plan goal. FLPMA also mandates incorporation and coordination. The risk and financial liability to the county for related fire fighting costs compel Lincoln County to insist on greater control over vegetation management that represents a significant fire threat.
124.	2-50	General	Incorporate Lincoln County plan provisions with respect to applied tire and forest resources.	
125.	2-66	Goal HR-4	Respect private land rights in the management of cultural resources and establish cooperative relationships with landowners to reduce conflicts in cultural sites and land rights.	Recent controversies point out the need for BLM to build relationships with land owners based on common goals, rather than threats or denials. Otherwise, private landowners will exclude BLM employees. The county supports protection of historical resources but objects to heavy-handed regulatory approaches taken in the name of cultural resource protection.
126.	2-68	5008	Cultural resource management plans could be developed for public land located within significant sites including, but not limited to, the following:	Management authority does not extend to private land. Much of the Antelope Trap is located on private land.

Page 55 of 71 Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11, 2007

**COMMENTS ON KEMMERER DRAFT RMP & DEIS**  
**COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District**

Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
127.	2-71		LR: 1 Change "allocation" to classification.	Lands are classified for disposal rather than allocated. 43 C.F.R. Part 2400.
128.	2072	6009	Exclude electrical or telecommunications lines from county rights-of-way	RMP would put telecommunications lines along paved county roads. Counties note that no such line should be within statutory right-of-way of 66 feet.
129.	2-75	6013	Legal access confined to as narrow a corridor as is necessary to serve such purpose will be sought across private land only if access is necessary for if a need is identified in support of resource programs. Place emphasis on the following areas: Redeye Basin, Commissary Ridge, Raymond Mountain WSA, Dempsey Basin, Slate Creek crucial winter habitat area, Emigrant Springs Slate Creek, Rock Creek area, Little Muddy Creek, Meeks Cabin, Westfork, Graham Reservoir, Church Buttes, Wildcat Butte, Porter Hollow, Lincoln Highway, and Bridger Antelope Trap.	43 U.S.C. § 1715(a) limits condemnation or acquisition of rights-of-way to smallest corridor necessary and only if based on a showing of necessity. Access to support a resource program is much broader than the access acquisition authority that FLPMA grants BLM.
130.			Delete expansion of forage reserves.	Because there is only one vacant grazing allotment, expansion of forage reserve status to other allotments would require the loss of a working ranch. Reduction in tax base and loss of a local business conflict with county plans and conservation district objectives, plans and policies.

Page 56 of 71 Comments on Kemmerer draft RMP and DEIS

OCTOBER 11, 2007

**COMMENTS ON KEMMERER DRAFT RMP & DEIS**  
**COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District**

Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
131.	2-103	7018	Develop a route from Kemmerer over the Dempsey Ridge to Fossil Butte and back to Kemmerer in cooperation with Lincoln County, the National Park Service, and the State of Wyoming. Designate this route a primitive, four-wheel-drive scenic national back country byway and manage with the objective of encouraging responsible motorized recreational use of the proposed byway, while protecting scenic, cultural, and critical wildlife habitat values that occur in the area.	Lincoln County objects unless and until issues revolving around improvements and maintenance are resolved. This road is a county road.

Page 57 of 71 Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
<b>Livestock Grazing Issues</b>			
132.			Quantify dust and particulate impacts to air quality from hunting and other recreation uses. The DEIS emphasizes air quality impacts from livestock operations but does not do the same for wildlife administrative actions or hunting and recreation. WGFD uses roads and enters habitat areas year-round, hunting use is intense during the seasons, and contribute significantly to air particulates.
133.	2-30 2-77	6023	In addition, under Alternative D, Christy Canyon Allotment is designated as a forage reserve. The Christy Canyon allotment is the only vacant allotment. It cannot meet criteria for a forage reserve due to the very short spring grazing season and lack of water. The BLM response admits that Christy Canyon is only a spring allotment without water. Because it is only grazed for less than two months, it is not a suitable forage reserve.

Page 58 of 71
Comments on Kemmerer draft RMP and DEIS

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
134.	2-30 2-77		Christy Canyon is not a forage reserve, in the sense that it gives operators access to forage during a drought. It is available for grazing less than two months. Due to lack of water, it is better suited as a sheep allotment, thus excluding the cattle operators. Thus, it is very limited as a forage reserve since much of the planning area is a winter. BLM has not documented the "sound land management basis" to keep this allotment in TNR status. It has been said that it is done to manage elk habitat but there is no documentation of forage values, competition, range conditions, to support this conclusion.

Page 59 of 71
Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
135.	2-77	6023	<p><i>To expand the concept of a forage reserve, BLM would have to put a ranch or ranches out of business. The local governments strongly oppose this outcome due to the long-term impacts on the economy and the fact that it contradicts plans and policies.</i></p> <p><b>Second Comment (April 2007)</b> Local governments did not ORIGINALLY comment that Christy Canyon is a term permit and converting it to a forage reserve would put an operator out of business. The comment was that expanding forage reserve to other allotments would involve putting other ranchers out of business.</p> <p>If BLM is going to develop forage reserves, as indicated in 6023, it will only happen if livestock operators go out of business because all of the other allotments are actively grazed to full numbers. The loss of even one ranch would harm the communities and economy. The regulatory burdens imposed in the RMP unless changed will put tremendous pressure on ranches to subdivide.</p>

Page 60 of 71
Comments on Kemmerer draft RMP and DEIS

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
136.	2-30	2.4.4.1	<p><i>Issuance of temporary nonrenewable permits for unallotted parcels is a discretionary decision for the DLM under Alternative D.</i></p> <p>BLM only has discretion to issue a nonrenewable permit as opposed to a 10-year term permit in the following circumstances: (1) the land is pending disposal; or (2) the land will be devoted to a public purpose prior to the end of ten years; or (3) it will be in the best interest of sound land management to specify a shorter term: 43 U.S.C. § 1752(a). <i>See also</i> 43 C.F.R. §4130.6-2 ("Nonrenewable grazing permits or leases may be issued on an annual basis to qualified applicants when forage is temporarily available, provided this use is consistent with multiple-use objectives and does not interfere with existing livestock operations on the public lands.") Neither the MSA or RMP to support retaining Christy Canyon as TNR if someone wanted a term permit.</p>
137.	2-41	1032	<p><i>Revise RMP maps to display floodplains, wetlands or riparian areas affected by limits on construction.</i></p> <p>The RMP maps fail to disclose land area affected by limits on permanent structures. Because that is the only way to divert water for grazing allotments, it has a significant impact on future management. The impacts must be disclosed and any conflicts resolved.</p>

Page 61 of 71
Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
138.	2-42	1033	No new permanent structures or facilities are allowed in 100-year floodplains unless they meet the requirements and intent of Executive Orders 11988 and 11990 and <b>the structures or facilities will not interfere with the functions of floodplain.</b> (1) there are no practicable alternatives and 2) appropriate mitigation measures are implemented.
139.	2-50	Goal B.R.3	Manage for the biological integrity and habitat function of terrestrial and aquatic ecosystems to <b>provide forage for livestock grazing</b> and sustain and optimize distribution and abundance of all native, desirable native, and special status fish and wildlife species consistent with habitat capability.
140.	2-51	Goal BR4	Manage or restore <b>vegetation and habitat</b> on BLM-administered lands within the planning area to facilitate <b>continued livestock grazing</b> and the conservation, recovery and maintenance of populations of native, desirable non-native, and special status species (BLM sensitive species, WGFD NSS 1-3 species, USFWS listed, proposed, or petitioned species) consistent with appropriate local, state, and federal management plans.

Page 62 of 71
Comments on Kemmerer draft RMP and DEIS

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
141.	2-50	BR 3-5:1	<b>So long as consistent with Wyoming Standards for Healthy Rangelands and without displacing livestock grazing, manage</b> Manage habitat to support Wyoming Game and Fish Department (WGFD) in the attainment of their big game herd unit objectives, strategic population plans, the Strategic Terrestrial Plan and the Aquatic Habitat Plan, to support well-distributed, healthy populations of fish and wildlife species consistent with WGFD's Comprehensive Wildlife Conservation Strategy (CWCS), and to achieve the stated purpose of designated Wildlife Habitat Management Areas.
142.	2-52	4005	Manage siting of facilities to minimize impacts on rangelands and fish and wildlife habitat function and quality and to minimize fish and wildlife mortality during the life of the facility.
143.	2-51	General	<b>Cooperate with predator control agencies to manage predator populations.</b>

Page 63 of 71
Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11,2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS  
COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County,  
Sweetwater County Conservation District, Uinta County, Uinta County Conservation District

Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
144.	2-76	L.R. 43	Animal unit month (AUM) levels will be sustained on an allotment-by-allotment basis for livestock grazing, providing Wyoming Standards for Healthy Rangelands are met or <b>the failure to meet or not maintain Wyoming Standards for Healthy Rangelands is due to other causes.</b>	BLM policy requires that managers address the other causal factors when an allotment does not meet or maintain standards. H-4180-1, III-15.13. As written the objective would ignore other causal factors, which is a major problem throughout Wyoming.
145.	2-76	6017	Livestock conversions are allowed in allotments with riparian concerns only when a plan is approved to address riparian issues. Management actions and range improvements proposed to address riparian issues would have to be implemented prior to authorizing the conversion. Livestock conversions may be approved only after completion of a suitability study for the conversion. The conversion may be authorized if it is determined that riparian habitats will be maintained or improved by the conversion.	The proposed condition is tantamount to denial given the lack of funding and support for range projects, including riparian area projects. Moreover, the RMP purports to prohibit surface disturbance and facilities in riparian areas which also precludes water developments that are necessary to reduce pressure on riparian areas and prohibits range projects in sage grouse habitats. Finally, this condition ignores the role of wildlife on riparian area vegetation or the fact that wildlife numbers exceed WGFID targets and in many cases may exceed their share of habitat.

Page 64 of 71 Comments on Kemmerer draft RMP and DEIS

OCTOBER 11,2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS  
COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County,  
Sweetwater County Conservation District, Uinta County, Uinta County Conservation District

Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
146.	2-77 4-191	6019	The livestock grazing use on public lands in vacant grazing allotments and unallotted parcels is a discretionary action <b>while adhering to statutory policies.</b> The BLM may issue can consider issuing 10-year renewable permits, or temporary, nonrenewable permits, or not issuing grazing permits for these parcels. <b>A decision to not issue grazing permits must conform to land management decision procedures and be based on rational factors, such as a determination that the land is not suitable for grazing.</b>	The management standard ignores PRIA's directive that the agencies issue 10-year permits unless the lands are pending disposal, lands will be dedicated to another public use, or there is sound land management basis to issue a permit for a lesser term. 43 U.S.C. §1752(b)(1)-(3). A plan amendment is necessary to decide not to grant permits for land determined to be suitable for grazing, so BLM does not have unlimited discretion to not issue a permit. The local governments believe that this standard reflects a lack of concern for the custom, culture and local economies that have always had agriculture as a critical part. <b>BLM has limited discretion not to authorize a term permit and forage reserve is not one of the reasons.</b>
147.	2-76 2-50	6015 6016	Add livestock grazing to management of biological resources.	As written, direction excludes grazing from vegetation management and makes it a second class use. Rangelands provide habitat for livestock as well.

Page 65 of 71 Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS  
 COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County,  
 Sweetwater County Conservation District, Uinta County, Uinta County Conservation District

Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
148.	2-76	6018	Livestock conversions are allowed in allotments with riparian concerns only when a plan is approved to address riparian issues. Management actions and range improvements proposed to address riparian issues would have to be implemented prior to authorizing the conversion. Livestock conversions may be approved only after completion of a suitability study for the conversion. The conversion may be authorized if it is determined that riparian habitats will be maintained or improved by the conversion.	Requests for conversions need to be granted on site specific basis. This standard is not based on any regulatory or policy criteria and imposes impossible conditions. It is especially troubling given the better market conditions for cattle. This standard locks sheep ranches into the business regardless of the market. The significant and consistent increases in big game, which have equal impacts on riparian areas, make this condition especially onerous.
149.	2-76	6019		Stock driveways and trails are also protected under R.S. 2477.
150.	2-103	8007	Revise economic objectives as set forth below.	The management actions for economics belong in minerals. SR 3.2 is not carried through in any of the management actions.

Page 66 of 71 Comments on Kemmerer draft RMP and DEIS

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS  
 COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County,  
 Sweetwater County Conservation District, Uinta County, Uinta County Conservation District

Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D	
			Recommended Change	Discussion
151.	2-103		Replace with the following: support tourism and agriculture provide economic opportunities on federal lands to support local communities and historical uses reduce regulatory burdens to ensure that local communities remain stable and viable assess impacts on local government services, schools, quality of life, law enforcement, custom culture and lifestyles	
152.		8008	Evaluate projects for opportunities to mitigate social and economic impacts	

Page 67 of 71 Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
Recommended Change		Discussion	
<b>Healthy Forest Management</b>			
153.	2-30 4-56		<p>Retain alternative A or Alternative C, allowing for timber sales and vegetation to address diseased and infested stands.</p> <p>The RMP fails to disclose or address the levels of disease and pest infestation, and resulting fuel loads. The DEIS acknowledges epidemic of beetle kill especially at Commissary and Dempsey Ridge. DEIS 3-56. The DEIS does not however address how its proposed timber harvest or vegetation treatments meet this situation. HFRA requires federal agencies to aggressively deal with dead and dying timber that infest adjacent stands. There is no doubt that the resulting fire will be catastrophic, with predictable loss of habitat and wildlife mortality. Notwithstanding the above, the RMP reduces the number of acres to be treated.</p>

Page 68 of 71 Comments on Kemmerer draft RMP and DEIS

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
Recommended Change		Discussion	
154.	2-50	BR1.4	<p>Forestland would provide a sustainable supply of forest products to the public and commercial uses and up to 13,000 acres of forestland would be available for forest management actions. Woodlands would supply forest products to the public as a by-product with forest health, landscape restoration, and reduction of forest fuels objectives and up to 15,000 acres of woodland would be available for forest management actions <b>unless forest health conditions indicate otherwise.</b></p> <p>The extent of beetle kill and infestation on the adjacent Bridger National Forest and the public lands represent imminent threat of major fire. The fire on the Ashley National Forest provides further evidence of the risk of significant loss of timber and forestland.</p>
155.	2-50	BR1.6	<p>Old growth management areas, and the connectivity of the old growth area, would be maintained as appropriate <b>for forest health</b> within forestlands and woodlands.</p> <p>Old growth is only one class of timber and the RMP should manage for all classes. The current extent of beetle kill and ongoing infestation mean that emphasis on old growth will only accelerate the loss of forestlands. The result will be catastrophic wildfire that will not only change wildlife habitat significantly, kill wildlife but also threaten the communities and ranch homes.</p>

Page 69 of 71 Comments on Kemmerer draft RMP and DEIS

## Appendix B – Public Response Documents

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
156.	2-55 4-56	4017	Replace with Proactive Management option discussed at DEIS 4-56.  Extent of beetle kill, disease, and fuel loads require more aggressive vegetation management. The AMS states: "Bark beetles are present and causing mortality throughout the entire range of forest lands with pockets of epidemic levels in various locations in the Commissary Ridge and Dempsey Ridge areas (Schliche 2003a)" at 63. The RMP should not be setting a ceiling on vegetation management.
157.	2-55	4019	inconsistent with VRM L limits on vegetation not required by IMP  Fire is not better than other types of treatment and could lead to catastrophic fires.
158.	2-55	4020	baseline of historic occurrence instead of conditions is not documented, and if treat the forest lands or wood lands then regeneration

Comments on Kemmerer draft RMP and DEIS

Page 70 of 71

OCTOBER 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Section / Record	Comment & Explanation: Preferred Alternative D
		Recommended Change	Discussion
159.	2-56	4021	Old growth forest areas are retained in an appropriate proportion to other timber classes and other forested areas may be restored to old growth conditions at appropriate locations and distribution levels, as evaluations occur, using an adaptive management approach. Pre-settlement old growth forest characteristics are identified for the various forest types. Connectivity of existing or potential old growth areas are adopted if appropriate and consistent with other management objectives whenever feasible.  Historically Rocky Mountain forests burned before they reached old growth. Drought cycles and beetle infestations make fuel loading a major issue which is a factor in old growth management. EIS needs to deal with fuel loads and risk of catastrophic fire. Statements in Ch. 3 of the DEIS that beetle kill is due to fire suppression are incomplete and misleading. The current situation is a product of the decrease in logging (Bridger-Teton ASQ dropped in 1989) coupled with fire exclusion, drought, and similar policies on adjacent National Forest System lands. Logging mimics the effects of fire and reduces fuel loads, as well as supports rural communities and economies.

Comments on Kemmerer draft RMP and DEIS

Page 71 of 71

## Appendix B – Public Response Documents

### Reply by Lincoln, Sweetwater, and Uinta Counties, and the Conservation Districts for Lincoln, Sweetwater, and Uinta Counties, working through the Coalition of Local Governments (CLG) to the Kemmerer Field Office's Letter of July 13, 2007

Cooperators Lincoln, Sweetwater, and Uinta Counties, and the Conservation Districts for Lincoln, Sweetwater, and Uinta Counties, working through the Coalition of Local Governments (CLG) reply to the Bureau of Land Management's (BLM) letter of July 13, 2007. The July 13, 2007 letter addressed legal and policy issues raised by CLG members in the April 8, 2007 cover letter comments on the Preliminary Draft Environmental Impact Statement #2 for the Kemmerer Resource Management Plan Revision. This reply is necessary because the BLM's letter does not address the issues raised regarding BLM compliance with governing statutes, rules, its manual/handbook, or administrative precedent. Because these issues bear directly on the planning decisions, we address the apparent confusion and redirect your attention to BLM guidance and precedent.

If a commenter fails to properly raise an issue, federal agencies will assume that the commenter has waived the issue in future administrative or judicial proceedings. *Wyo. Lodging and Restaurant Assn. v. Dept. of the Interior*, 398 F.Supp.2d 1197, 1208 (D. Wyo. 2005) (citing *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 513-54 (1978)). It is therefore necessary to repeat issues that have been raised but rejected, implicitly or explicitly. It also appears that in many cases, that the Local Governments' cover letter comments, which addressed overriding policy and legal issues, were misunderstood. These issues are repeated and discussed below, so that BLM may adequately address them as required by the National Environmental Policy Act (NEPA). 40 C.F.R. § 1503.4(a)(5).

#### Ex Parte Meetings with Cooperators

The CLG members repeat their objection that the planning team has met with one or two cooperators to address issues that affect the interests of the other cooperators. These meetings resulted in significant changes in the previously-agreed elements of the preferred alternative. For example, CLG members believed that the cooperators agreed that failure to meet or maintain rangeland health standards would result in corrective action aimed at the cause, consistent with BLM handbook direction. Instead, the ID team later told CLG members that BLM lacked jurisdiction over wildlife numbers and would instead have to reduce livestock grazing. This change in position was attributed to meetings with WGFD.

The response that BLM can meet with experts or cooperators is true, but this was not the concern expressed by CLG members. CLG did not suggest that BLM could not meet with experts or with cooperators. Instead, CLG objects to unilateral changes in the preferred alternative that are due to *ex parte* meetings with one cooperator. The Wyoming federal court recently set aside an FEIS on the grounds that the preferred alternative was significantly revised without the state cooperator. *Intl. Snowmobilers Assn. v. Norton*, 340 F. Supp.2d 1249, 1262 (D. Wyo. 2004). As was true for snowmobiling in the park controversy, BLM cannot make significant changes to the preferred alternative while consulting with some cooperators and excluding others. 40 C.F.R. §§1501.1(b), 1501.6, 1502.9(a), 1503.3, 1506.2, 1508.5.

Page 1 of 4 Reply to Issues Addressed in July 13, 2007 Letter  
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### Livestock Grazing Reductions When Rangeland Health Standards Not Met Due to Other Causes

As noted above, the CLG cooperators were told by Kemmerer planning team that BLM would reduce grazing when excess numbers of wildlife (big game) contributed to the failure to meet rangeland health standards, because BLM could not reduce wildlife numbers. As CLG explained previously, BLM policy prohibits reductions of livestock grazing when it is not the causal factor. H-4180-1, 1-11, HI-12, C, ni-15, JE.3. While it is true BLM has no jurisdiction over setting wildlife populations, BLM must still protect rangeland resources. See *Oregon Natural Desert Ass'n v. Rasmussen*, 451 F. Supp.2d 1202, 1206 (D. Or. 2006) (BLM concluded that continued livestock use would not impede floodplain developments and was not a significant factor in the area failing to meet the rangeland health standards and did not limit grazing levels). When excess wildlife is a factor in damage, it is incumbent on BLM to inform the state wildlife agency that wildlife numbers need to be reduced, notwithstanding any agreement on the part of BLM to support WGFD population objectives.

To the extent the BLM MOU with WGFD provides that BLM will accept all WGFD population objectives, it is unenforceable when those objectives result in adverse resource impacts, such as contributing to the failure to meet or maintain rangeland health standards. The position taken by your office that it would instead impose punitive measures on the livestock grazing industry violates BLM policy, H-4180, Ch. HI, App. C, and BLM's obligation to protect vegetation and riparian resources. 43 C.F.R. § 1782.1. CLG members believe that the RMP needs to be revised to qualify the adoption of WGFD population objectives and habitat management. Otherwise, the RMP commits BLM to these objectives and plans without regard to the commitments to maintain livestock grazing AUMs while meeting rangeland health standards.

#### Delegation of Habitat Management Decisions to WGFD

The 1990 BLM WGFD MOU provides that BLM will accept WGFD population objectives and habitat management plans, and that it will manage public lands consistent with WGFD habitat management plans. (BLM WGFD MOU 1990, pg. 9 jf). By agreeing to accept any number of wildlife proposed by WGFD and to adopt the related habitat management plans, BLM abdicates its responsibilities to manage vegetation and riparian resources. BLM would not agree to double the number of livestock on public lands without documenting the capability of the forage resource to support the increased number of livestock. But in the MOU, BLM agrees to provide habitat for double the number of wildlife, without any assessment of the impacts, including whether there is sufficient habitat and whether it will interfere with meeting or maintaining *Wyoming Standards for Healthy Rangelands*.

A recent decision by the Colorado district court supports CLG members' objection to the abdication of management authority to a state agency. In *High County Citizens' Alliance v. Norton*, Judge Brimmer set aside a Settlement Agreement on the basis that the Interior Department unlawfully delegated water protection authority to a state conservation agency. 448 F. Supp.2d 1235 (D. Colo.

Page 2 of 4 Reply to Issues Addressed in July 13, 2007 Letter  
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## Appendix B – Public Response Documents

2006). The agreement provided that the National Park Service would withdraw its reserved water rights claim in state water courts and abide by water allocation decisions made by the Colorado Water Conservation Board. The court concluded that even if the agreement resolved decades of controversy, the National Park Service could not relinquish a material element of park protection by agreeing to accept a state agency decision. *Id.* at 1246-47.

In the Kemmerer RMP, BLM is agreeing to adopt unknown and often increasing, number of wildlife and habitat management plans, without regard to the impacts on other resources or consistency with other regulatory criteria. By accepting population objectives and habitat management plans, BLM is delegating its decision making authority to a state agency and this violates federal law. *Id.* (citing *United States Telecom Association v. Federal Communications Assn.*, 359 F.3d 554, 566 (D. C. Cir.), cert. denied, 543 U.S. 925 (2004)).

### Recreation and Public Purposes Act Issue

BLM's response to the Recreation and Public Purposes Act (RPPA) comment also fails to accurately state the issue. Lincoln County has been working with BLM to expand the Pine Creek ski area, through patent and lease of additional public land pursuant to the RPPA. The proposed Pine Creek SRMA would preclude the proposed expansion of the ski area. Lincoln County believes that this is a deliberate effort to stifle recreation use in the county. The response about removing a portion of the existing RPPA lease from the proposed SRMA boundary does not address the impacts of the proposed SRMA on the expansion. Thus, the response is inadequate.

### Use of Administratively Unavailable Category for Mineral Leasing

Here again BLM misunderstands the CLG members' objection to the use of administratively unavailable to prohibit mineral leasing. There is no question that BLM may elect not to allow mineral leasing on public lands. As explained in the legal memorandum included as part of the CLG members' comments, there is also no question that after 1976, Section 204 of FLPMA establishes the procedures that BLM must follow to do so. 43 U.S.C. § 1714(c).

BLM's citation to the Mineral Leasing Act of 1920 as authority does not explain why the 1920 law was not modified by the mandatory procedures enacted in 1976. BLM's position, in fact, was summarily rejected by the BLM Director in 2006: "Except for Congressional withdrawals, public lands shall remain open and available for mineral exploration and development unless withdrawal or other administrative actions are clearly justified in the national interest in accordance with the Department of the Interior Land Withdrawal Manual 603 DM 1, and the BLM regulations at 43 C.F.R. 2310." BLM Energy and Non-Energy Mineral Policy (April 21, 2006). BLM formally adopted this policy through IM 2006-197. BLM, therefore, must comply with the 2006 policy, which

conditions the closure of lands available to mineral exploration and development on following FLPMA's withdrawal procedures.<sup>1</sup>

Nor does BLM address binding legal precedent holding that mineral leasing closures are subject to Section 204 procedures. See *Mountain States Legal Foundation v. Andrus*, 499 F. Supp. 383,392-93 (D. Wyo. 1980) (deferring action on mineral lease applications pending RARE II violated §204 of FLPMA); *Mountain States Legal Foundation v. Hodel*, 668 F. Supp. 1466, 1474 (D. Wyo. 1987) (deferring mineral lease applications pending completion of EIS and land use plans violated Section 204); *Clayton W. Williams*, 103 IBLA 192, 206 (1988) (explaining that the Secretary's discretion under the Mineral Leasing Act to refuse to issue oil and gas leases is exercised "both on an ad hoc basis, in response to specific lease offers, or more formally through his general authority to withdraw land from mineral leasing)."

These decisions do not hold that BLM must offer public lands for mineral leasing, only that it must follow FLPMA's withdrawal and reporting procedures, when it wishes to foreclose that land use. Section 204 procedures require more data and analysis than found in the RMP, including identification of the threat to resources justifying the withdrawal, an inventory and evaluation of all of the resources within the withdrawn area, continuation of existing uses and rights, impacts on state and local economies, consultation with local governments, a public hearing, and the value of the mineral resources foregone. 43 U.S.C. § 1714(c). The FEIS does not quantify the impacts on state and local communities from the closure, natural gas or coal resource potential and value, or the identified threat that necessitates the closure. The Section 204 procedures are mandatory, and BLM lacks the discretion to instead use the land use decision and classification authority in Section 202(c).

<sup>1</sup> Terms and direction in manuals and instruction memoranda are binding on BLM employees. *Robert Glenn*, 124 IBLA 104, 108 (1992); *Ellis Ferguson*, 69 IBLA 352 n.2 (1983).

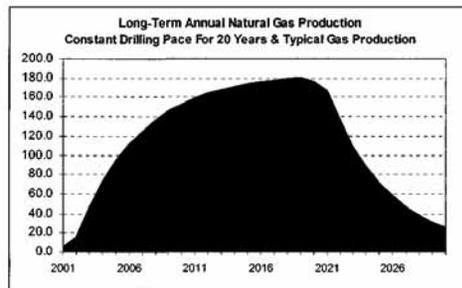
## Appendix B – Public Response Documents

*1. The RMP/EIS fails to fully disclose long-term implications of future oil and gas development facilitated by this Plan. An understanding of these implications is important for development of the final RMP and for federal, state and local government decision-makers.*

We believe the EIS, which truncates the production projections and economic impact analysis in the year 2020, fails to fully recognize and disclose reasonably foreseeable implications and impacts of the agency's management alternatives that are important for the agency, the general public, and local government officials to understand.

Our specific issue lies in the failure to describe the rapid decline in production, employment, production value related royalties and taxes, and other related economic activities that would be expected following the completion of the development program. Figure 1 below illustrates long-term annual natural gas production consistent with Alternative A of the EIS analysis.

Figure 1

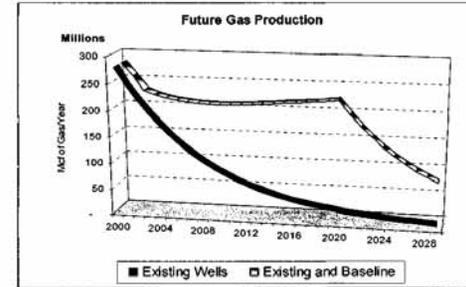


By failing to address the precipitous decline following the completion of development, the EIS overlooks important information that is vital for federal and state officials and other to fully appreciate the challenges facing local governments, businesses, public service providers, and others in addressing the challenges associated with the rapid growth that has accompanied recent energy development, while facing the prospect of significant economic contraction within the timeframe that is shorter than the maturity terms on most municipal bonds or home mortgages.

We appreciate the need to define time horizon for the purposes of the EIS analysis. At the same time, the decision regarding that time horizon should not preclude acknowledgement and disclosure of a reasonably foreseeable long-term effect that follows shortly beyond the out-year of the time horizon.

In the same vein, while we recognize the RMP/EIS focus on future federal management, we believe that the EIS should recognize the implications of future management proposals by presenting forecasts of the combined production from existing wells and those under the proposed alternatives. At present the production forecasts and economic analysis, which portray the production gains in the left half of Figure 1 above, could lead many to believe that the alternatives will result in dramatic increases in production. However, this would not be the case, given the anticipated production declines from existing wells (see Figure 4-15 of the DEIS). Rather, future production facilitated by the RMP could arrest the pace of decline — Figure 2 below illustrates one scenario from the RMP. Again, the implications for local fiscal planning of overall production shown in Figure 2 are different than those suggested by the increasing production portrayed in Figure 1.

Figure 2



*2. The RMP/EIS tends to downplay and obfuscate recent and continuing impacts of energy development on local socioeconomic conditions. As a consequence, land use management decisions may be made against an unrealistic view of current local conditions.*

We recognize that the RMP establishes a long-range planning framework for the Kemmerer district and thus needn't be as detailed as a site/project-specific EIS. Nonetheless, the RMP/EIS falls short of adequately describing current conditions and the effects of recent development on local communities. This is perhaps most evident with respect to housing. Although Figure 3-7 and the accompanying text factually describe the comparative changes in housing prices and median incomes, it fails to discuss the implications thereof on affordability. Neither does the discussion on housing supply and vacancy rates discuss the extremely tight market in terms of availability. The most recent data release from the Wyoming Housing Data Partnership provides evidence of the continuing tight market (see Table 1 below).



## Appendix B – Public Response Documents

October 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comm ent No.	Page	Comment & Explanation: Glossary Definitions	
		Recommended Change	Discussion
4.	G-1	<b>ALLOTMENT</b> - An area of land designated and managed for livestock grazing where one or more livestock operators graze their livestock.	Per 43 C.F.R. § 4100.0-5, definition should clearly state that land is designated for livestock use
5.	G-1	<b>Big Game Crucial Winter Range:</b> Winter habitats where during on which wildlife species depend for survival. Because of seveic weatheir conditions of other limiting factors, wildlife species can use when no alternative habitats are would be available.	Definition inaccurately suggests wildlife are perennially confined to a crucial winter range. Typically, crucial winter ranges are used during infrequent years when winter conditions are especially severe. See Sawyer and Lindsey 2001 (occurring 2-3 years in last twenty years).

Page 2 of 19

Comments on Glossary Kemmerer Draft RMP & DEIS

October 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comm ent No.	Page	Comment & Explanation: Glossary Definitions	
		Recommended Change	Discussion
6.	G-2	<b>Cultural Resource Inventory Levels:</b> A three-tiered process for discovering, recording, and evaluating cultural resources. <b>(a) Class I - a compilation and analysis of all reasonably available cultural resource data and literature, and a management-focused, interpretive, narrative overview, and synthesis of the data.</b> (Manual Section 8110.21A). <b>(b) Class II - A sampling survey usually aimed at developing and testing a predictive model of cultural resource distribution properties; and records the physical extent of specific properties.</b>	Class I Delete reference to "oral informant" because not in manual and raises issues of verification.

Page 3 of 19

Comments on Glossary Kemmerer Draft RMP & DEIS

## Appendix B – Public Response Documents

October 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Comment & Explanation: Glossary Definitions	
		Recommended Change	Discussion
		<p>(c) <b>Class III</b> - An oil-the-ground survey to discover, record, and evaluate cultural resources within a specific geographic area (e.g., usually an area of potential effect for a proposed undertaking). Intensive survey describes the distribution of properties in an area; determines the number, location and condition of properties; determines the types of properties actually present within the area; permits classification of individual</p>	<p>Class III is not required for every undertaking only those for which the risk of harm is clear.</p>
7.	G-2	<p><b>Designated Roads and Trails:</b> Specific roads and trails administered by BLM on which some type of motorized vehicle use is allowed either seasonally or year-long.</p>	<p>BLM may not determine allowable uses on roads and trails it does not own or administer. There are also specific designation criteria and procedures to follow, including minimizing conflicts with public land users. 43 C.F.R. Subpart 8342.</p>

Page 4 of 19

Comments on Glossary Kemmerer Draft RMP & DEIS

October 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District			
Comment No.	Page	Comment & Explanation: Glossary Definitions	
		Recommended Change	Discussion
8.	G-4	<p>Replace Wildlife-disturbing Activity with <b>Disruptive Activities</b> - Authorized activities that may cause displacement of or excessive stress to wildlife during critical life stages or during periods of severe weather conditions and which directly threaten the wildlife. This definition does not apply to authorized activities that do not involve pursuit or threatened harm, such as land surveys, herding livestock, range improvement maintenance, well site maintenance, use of existing roads and trails.</p>	<p>Definition added because RMP uses the term throughout without a definition. The definition addresses activities directly threatening to wildlife, e.g. being chased by a truck. See R. Taylor, Response to Draft Definition of Disruptive Activity as Found in the draft Rawlins Resource Management Plan (November 9, 2006).</p>
9.	G-14	<p><b>Rangeland Health:</b> The degree to which the integrity of the soil, hydrological and ecological processes of rangeland ecosystems are sustained. <b>Rangeland health is measured through trend and monitoring studies.</b></p>	<p>Definition is incomplete and needs to be revised to conform to BLM grazing regulations, 43 C.F.R. § 4200.0-5 (definitions of trend and monitoring).</p>

Page 5 of 19

Comments on Glossary Kemmerer Draft RMP & DEIS

## Appendix B – Public Response Documents

October 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS  
 COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County,  
 Sweetwater County Conservation District, Uinta County, Uinta County Conservation District

Comment No.	Page	Comment & Explanation: Glossary Definitions	
		Recommended Change	Discussion
10.	G-15	Recreation Opportunity Spectrum (ROS): The Recreation Opportunity Spectrum provides a framework for stratifying and defining classes of outdoor recreation opportunity environments. Possible mixes of activities, settings, and experience opportunities have been arranged along a spectrum—the Recreation Opportunity Spectrum. Each of several classes ranging from primitive to urban is defined in terms of its combination of activity, setting, and experience opportunities. ROS classes become an integral part of management prescriptions for recreation in the Resource Management Plan.	Not used in RMP. ROS is not a BLM planning concept. The Recreation Opportunity Spectrum (ROS) was developed by the Forest Service to provide a framework for classifying and defining segments of outdoor recreation environments, activities, and experience opportunities. 36 C.F.R. § 219.21 (2000), Forest Service Manual 2310.

Page 6 of 19
Comments on Glossary Kemmerer Draft RMP & DEIS

October 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS  
 COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County,  
 Sweetwater County Conservation District, Uinta County, Uinta County Conservation District

Comment No.	Page	Comment & Explanation: Glossary Definitions	
		Recommended Change	Discussion
11.	G-15	Resource Damage: This type of damage is defined as impacts on public land resources that constitute "undue and unnecessary degradation," leaving signs of vehicle use, such as wheel ruts in wet meadows, visual scars on hillsides, or soil erosion. Additional examples include surface disturbance that causes the loss of vegetative cover, degradation of wildlife habitats, the creation of new roads, and the introduction of noxious weeds. Damage to vegetation also includes crushing or uprooting trees and shrubs. The determination of whether resource damage has occurred is at the discretion of Field Managers and law enforcement personnel.	Revise. The examples given, crushing vegetation, soil erosion are well within the scope of allowable change or use and necessary degradation. Resource damage that triggers civil or criminal action requires evidence of "undue and unnecessary degradation" or semi-permanent change. Most "impacts" to resources are reversible.

Page 7 of 19
Comments on Glossary Kemmerer Draft RMP & DEIS

## Appendix B – Public Response Documents

October 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS  
 COALITION OF LOCAL GOVERNMENTS: *Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District*

Comment No.	Page	Comment & Explanation: Glossary Definitions	
		Recommended Change	Discussion
12.	G-16	<p><b>Riparian/Wetland Functionality Classification:</b></p> <p><b>Desired Plant Community (DPC):</b> A plant community that produces the kind, proportion and amount of vegetation necessary for meeting or exceeding the land-use plan requirements or ecological site objectives. The desired plant community must be consistent with the site's capability to produce the desired vegetation through management, land treatment or a combination of the two. Of the several plant communities that may occupy a site, the DPC is the community that has been identified through a management plan to best meet the plan's objectives for the site. At a minimum, it must protect the site.</p> <p><b>Functional At Risk:</b> Riparian/wetland areas that are in functional condition, but an existing soil, water, or vegetation attribute makes them susceptible to degradation.</p>	<p>Last part of definition not included BLM Technical Reference 1735-9 PFC terminology, is out of place and should be moved to <b>Wetland</b> definition in glossary.</p>

Page 8 of 19 Comments on Glossary Kemmerer Draft RMP & DEIS

October 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS  
 COALITION OF LOCAL GOVERNMENTS: *Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District*

Comment No.	Page	Comment & Explanation: Glossary Definitions	
		Recommended Change	Discussion
	G-16	<p><b>Proper Functioning Condition:</b> A riparian or wetland area is considered to be in proper functioning condition when adequate vegetation, landform, or large woody debris is present to do the following: (Cont.)</p>	<p>As part of the <i>Wyoming Standards for Healthy Rangeland Standards</i>, PEC is an element of the Fundamentals of Rangeland Health for watersheds but only as a qualitative assessment (monitoring) tool used to characterize the resource conditions so that the status can be evaluated relative to land health standards. BLM Manual H-4180,1-6, III, H-10 (2001); IM WY 98-031 (1998). Specifically, PFC is one several suggested monitoring methods appropriate for gathering data used to evaluate indicators for Wyoming's riparian and wetland vegetation standard identified in the Rangeland Health Standards. Rangeland Monitoring Protocol, IM WY-2001-054, Attachment 1 (2001). PFC, therefore, is an inventory and monitoring tool; rather than a standard or management objective.</p>

Page 9 of 19 Comments on Glossary Kemmerer Draft RMP & DEIS

## Appendix B – Public Response Documents

October 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS  
 COALITION OF LOCAL GOVERNMENTS: *Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District*

Comment No.	Page	Comment & Explanation: Glossary Definitions	
		Recommended Change	Discussion
13.	G-18	<p><b>Special Recreation Management Areas (SRMAs):</b> These are areas where congressionally recognized recreation values exist or where significant public recreation issues of management concerns occur. Special or more intensive types of management typically are needed. <b>These are areas identified for specific recreation management identified in the land use planning process or revision to meet recreation demand and opportunities.</b></p>	<p>Special area designations may <u>only</u> be identified through the land use planning process. BLM Land-Use Planning Handbook II-1601-1, Appendices C and F. BLM does not have congressionally designated special recreation management areas.</p>

Page 10 of 19 Comments on Glossary Kemmerer Draft RMP & DEIS

October 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS  
 COALITION OF LOCAL GOVERNMENTS: *Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District*

Comment No.	Page	Comment & Explanation: Glossary Definitions	
		Recommended Change	Discussion
14.	G-18	<p>Surface-disturbing Activities (or Surface Disturbance): Surface disturbance <b>refers to development activities that involve the removal of vegetation and topsoil, or overburden where there is a physical change to the surface, in connection with activities for mineral or energy development, rights-of-way, and road construction or reconstruction. It does not include incidental disturbances associated with the construction, reconstruction, or maintenance of fences or corrals or stock tanks, livestock or wildlife grazing, or recreation uses.</b></p>	<p>Definition is overbroad in the RMP's regulatory context. The revision is based on definitions found in BLM regulations. 43 C.F.R. §3809.0-5 (defining casual use and exploration); and 30 C.F.R. §§701.5, 710.5 (surface coal mining).</p>

Page 11 of 19 Comments on Glossary Kemmerer Draft RMP & DEIS

## Appendix B – Public Response Documents

October 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS  
 COALITION OF LOCAL GOVERNMENTS: *Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District*

Comment No.	Page	Comment & Explanation: Glossary Definitions	
		Recommended Change	Discussion
		<p>is the physical disturbance and movement or removal of land surface and vegetation. These activities range from the very minimal to the maximum types of surface disturbance associated with such things as off-road vehicle travel or use of mechanized, rubber-tired, or tracked equipment and vehicles; some timber cutting and forest silvicultural practices; excavation and development activities associated with the use of heavy equipment for road, pipeline, powerlines and other types of construction; blasting; strip, pit, and underground mining and related activities, including ancillary facility construction; oil and gas well drilling and field construction or development and related activities; range improvement project construction; and recreation site construction. The Wyoming State Office currently is revising this definition.</p>	

Page 12 of 19 Comments on Glossary Kemmerer Draft RMP & DEIS

October 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS  
 COALITION OF LOCAL GOVERNMENTS: *Lincoln County, Lincoln Conservation District, Sweetwater County, Sweetwater County Conservation District, Uinta County, Uinta County Conservation District*

Comment No.	Page	Comment & Explanation: Glossary Definitions	
		Recommended Change	Discussion
15.	G-19	<p><b>Traditional Cultural Property (TCP):</b> A cultural property that is eligible for inclusion in the National Register of Historic Places because of its association with a living community's cultural practices or beliefs that (a) are rooted in that community's history; and (b) are important in maintaining the community's continuing cultural identity (BLM 2007b).</p>	<p>The definition needs to be revised to conform to BLM TCP policy and National Park Service direction. BLM Manual 8100 (TC definition) and 8110.42(c) (allocations to traditional use category); 36 CFR 60.4 (criteria for evaluation); National Register Bulletin 38 (discussing traditional cultural properties).</p>
16.	G-20	<p><b>Visual Resources:</b> The visible physical features of a landscape (topography, water, vegetation, animals, structures, and other features) that constitute the scenery of an area. Scenic qualities measured by seven key factors: landform, vegetation, water, color, adjacent scenery, scarcity, and cultural modifications.</p>	<p>Revise per H-8140-1. Visual values are identified through the VRM inventory and are considered with other resource values in the RMP process. BLM Manual 8400.06.</p>

Page 13 of 19 Comments on Glossary Kemmerer Draft RMP & DEIS

## Appendix B – Public Response Documents

October 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS  
 COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County,  
 Sweetwater County Conservation District, Uinta County, Uinta County Conservation District

Comment No.	Page	Comment & Explanation: Glossary Definitions	
		Recommended Change	Discussion
17.	G-20	Visual Resource Management (VRM) Classes: Class I. The objective of this class is to maintain a landscape setting that appears unaltered by humans. It is applied to wilderness areas, some natural areas, wild portions of wild and scenic rivers, and other similar situations in which management activities are to be restricted, preserve the existing character of the landscape. This class provides for natural ecological changes; however, it does not preclude very limited management activity. The level of change to the characteristic landscape should be very low and must not attract attention	Revisions conform to definitions found in handbook, Manual \$400.06 and \$410-1, p.1; Southern Utah Wilderness Alliance, 144 ERLA 70, 84 (1998)

Page 14 of 19 Comments on Glossary Kemmerer Draft RMP & DEIS

October 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS  
 COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County,  
 Sweetwater County Conservation District, Uinta County, Uinta County Conservation District

Comment No.	Page	Comment & Explanation: Glossary Definitions	
		Recommended Change	Discussion
18.	G-20	Class II. The objective of this class is to design proposed alterations so as to retain the existing character of the landscape. The level of change to the characteristic landscape should be low. Management activities may be seen, but should not attract the attention of the casual observer. Any changes must repeat the basic elements of form, line, color, and texture found in the predominant natural features of the characteristic landscape. (Cont.) The objective of this class is to retain the existing character of the landscape. The level of change to the characteristic landscape should be low. Management activities may be seen, but should not attract the attention of the casual observer. Any changes must repeat the basic elements of form, line, color, and texture found in the predominant natural features of the characteristic landscape.	

Page 15 of 19 Comments on Glossary Kemmerer Draft RMP & DEIS

## Appendix B – Public Response Documents

October 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS  
 COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County,  
 Sweetwater County Conservation District, Uinta County, Uinta County Conservation District

Comm ent No.	Page	Comment & Explanation: Glossary Definitions	
		Recommended Change	Discussion
19.	G-20	<p>Class III. The objective of this class is to partially retain the existing character of the landscape. The level of change to the characteristic landscape should be moderate. Management activities may attract attention but should not dominate the view of the casual observer. Changes should repeat the basic elements found in the predominant natural features of the characteristic landscape.</p> <p>The objective of this class is to design proposed alterations so as to partially retain the existing character of the landscape. Contrasts to the basic elements (form, line, color, and texture) caused by a management activity may be evident and begin to attract attention in the characteristic landscape; however, the changes should remain subordinate to the existing characteristic landscape.</p>	

Page 16 of 19 Comments on Glossary Kemmerer Draft RMP & DEIS

October 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS  
 COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County,  
 Sweetwater County Conservation District, Uinta County, Uinta County Conservation District

Comm ent No.	Page	Comment & Explanation: Glossary Definitions	
		Recommended Change	Discussion
20.	G-20	<p>Class IV. The objective of this class is to provide for management activities that require major modification of the existing character of the landscape. Contrasts may attract attention and be a dominant feature of the landscape in terms of scale; however, changes should repeat the basic elements (form, line, color, and texture) inherent in the characteristic landscape. (Cont.)</p> <p>The objective of this class is to provide for management activities which require major modifications of the existing character of the landscape. The level of change to the characteristic landscape can be high. These management activities may dominate the view and be the major focus of viewer attention. However, every attempt should be made to minimize the impact of these activities through careful location, minimal disturbance, and repeating the basic elements.</p>	

Page 17 of 19 Comments on Glossary Kemmerer Draft RMP & DEIS

## Appendix B – Public Response Documents

October 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS  
 COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County,  
 Sweetwater County Conservation District, Uinta County, Uinta County Conservation District

Comment No.	Page	Comment & Explanation: Glossary Definitions	
		Recommended Change	Discussion
G-20		Rehabilitation Area. Change is needed or change may add acceptable visual variety to an area. This class applies to areas where the naturalistic character as been disturbed to a point at which rehabilitation is needed to bring it back into character with the surrounding landscape. This class would apply to areas identified in the scenic evaluation where the quality class has been reduced because of unacceptable cultural modification. The contrast is inharmonious with the characteristic landscape. It also may be applied to areas having the potential for enhancement, i.e., add acceptable visual variety to an area or site. It should be considered an interim or short-term classification until one of the other VRM class objectives can be reached through rehabilitation or enhancement. The desired VRM class should be identified. Used in the context of prompt actions taken to stabilize soil, water, and vegetation following a large fire.	

Page 18 of 19 Comments on Glossary Kemmerer Draft RMP & DEIS

October 11, 2007

COMMENTS ON KEMMERER DRAFT RMP & DEIS  
 COALITION OF LOCAL GOVERNMENTS: Lincoln County, Lincoln Conservation District, Sweetwater County,  
 Sweetwater County Conservation District, Uinta County, Uinta County Conservation District

Comment No.	Page	Comment & Explanation: Glossary Definitions	
		Recommended Change	Discussion
20		<b>Wildlife-disturbing Activity:</b> Authorized activities that may cause displacement of or excessive stress to wildlife during critical life stages or during periods of severe weather conditions. Wildlife-disturbing activities include human presence, noise, and activities using motorized vehicles or equipment.	See Glossary Comment #7.
21.	G-20- G-21	<b>Withdrawal:</b> Removal or withholding of public lands, by statute or Secretarial order, from operation of some or all of the public land laws. A mineral withdrawal includes public lands potentially valuable for leasable minerals, precluding the disposal of the lands, except with a mineral reservation clause, unless the lands are found not to contain a valuable deposit of minerals. A mineral withdrawal is the closing of an area to mineral location and development activities.	The definition is too general and needs to be revised to incorporate the more specific definition under FLPMA, 43 U.S.C. § 17020).

Page 19 of 19 Comments on Glossary Kemmerer Draft RMP & DEIS



## Appendix B – Public Response Documents

BROOKS & SCHLUTER L.L.P.

C. E. BROOKS & ASSOCIATES, P. C.  
999 18<sup>TH</sup> STREET • SUITE 1605 • DENVER, COLORADO • 80202  
(303) 297-9100 • FAX: (303) 297-9101

### MEMORANDUM

TO: Sublette County, Sublette County Conservation District  
FROM: Constance E. Brooks  
DATE: April 7, 2006, updated October 11, 2007  
RE: Withdrawals Under the Federal Land Policy and Management Act ("FLPMA")

The question is whether BLM can use the RMP to preclude oil and gas leasing and development rather than follow the withdrawal procedures set out in FLPMA. The provisions in FLPMA, the legislative history, policy directives and case law show that the withdrawal procedures apply to all mineral development, not just hardrock mining.

#### FLPMA Provisions

FLPMA defines a withdrawal as:

[Withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than "property" governed by the Federal Property and Administrative Services Act, as amended (40 U.S.C. 472) from one department, bureau or agency to another department, bureau or agency.

43 U.S.C. §17020).

A mineral lease is a sale of the an interest in federal land; the mineral rights for oil and gas or coal for a stated term. When parcels of lands are offered for leasing, the list is called a lease sale list and a mineral lease is thus a "sale of public lands."<sup>1</sup>

<sup>1</sup> FLPMA defines public land as "any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management,

C. E. BROOKS & ASSOCIATES, P. C.

Sublette County, Sublette County Conservation District  
April 7, 2006  
Page 2

The Mineral Leasing Act is a public land law that provides for the orderly sale of the rights to develop oil and gas. Any decision of BLM to withhold public lands from sale under the Mineral Leasing Act to protect culture, wildlife, and wilderness values falls squarely within the definition of a withdrawal under FLPMA.

Section 204 of FLPMA governs the withdrawal procedures. Section 204(c) applies virtually all mineral closures involving more than 5,000 acres; 43 U.S.C. § 1714(c). First, the Secretary must publish notice of the withdrawal. 43 U.S.C. §1714(b)(1). Second, the Secretary must notify the respective resource committees in Congress and provide data and analysis on 12 separate issues. § 1714(c)(2)(1)-(12). The issues require the Secretary to (1) explain the proposed land use that makes the withdrawal necessary; (2) inventory of current natural resource uses and values; (3) effects on adjacent non-federal land, possible environmental degradation, and economic impacts of land use change on individuals, local communities, and the nation; (4) identify present land users and effects by proposed use; (5) analyze how existing and potential resources conflict with proposed use, with provisions to continue or terminate existing uses and economic effects, (6) how the withdrawn land will be used, (7) how lands would be used if proposed use were to proceed, and suitable alternative sites, (consultation with other federal agencies, regional, state and local governments, effect of proposed use on state and local economies, (9) duration of withdrawal, (10) public hearings, (11) location of records and (12) report by engineer or geologist documenting known depositions, mineral production, mining claims, mineral leases, potential, and market demands.

This extensive report required in Section 204 is necessary to justify the closure and ensures that the withdrawal is based on an informed decision weighing the need for closure against the foregone economic and mineral supply benefits. It also ensures that there is a full and complete public understanding of the basis for the decision and involvement of the state and local governments.

Decisions that exclude primary uses (grazing, recreation, fish and wildlife, rights-of-way, and mineral development) are also called "management decisions." 43 U.S.C. §1712(e). If more than 100,000 acres are involved, BLM must report the closures to the respective resource committees of Congress.

The withdrawal procedures, review of existing withdrawals, and direction to review and revoke land classifications and withdrawals were to update the previous closures of public lands, open public lands for development and ensure that current and future decisions were based on actual need and public involvement. Thus, the premise that mineral leasing is excluded in Section 204

without regard to how the United States acquired ownership..." (excluding Outer Continental Shelf and lands held in trust for benefit of Eskimos and Aleuts). 43 U.S.C. § 1702(e).

## Appendix B – Public Response Documents

C.E.B ROOKS & ASSOCIATES, P.C.

Sublette County, Sublette County Conservation District  
April 7, 2006  
Page 3

contradicts the very reason that Congress determined that FLPMA withdrawal procedures were needed, because it evades an open and public debate.

### Legislative History

The legislative history shows that Congress intended Section 204 to apply to all forms of mineral development, not just hard rock mining. Based on the report by the Public Land Law Review Commission ("PLLRC") identifying the need for reform of public land laws, especially the withdrawal process. Congress concluded that it was necessary to terminate the withdrawals and public land classifications that denied access for mineral leasing as well as access for mining under the 1872 Mining Law. Rising in support of Section 204, during the House of Representatives debate, Congressman Skubitz articulated the concern that federal land be available for mineral exploration and development, including oil and gas.

We must end what often has been a historic pattern of casual and even reckless withdrawal of public lands. It is essential that Congress be informed of, and able to oppose if necessary, withdrawals which it determines not to be in the best interests of all the people. Further, this legislation emphasizes that our goal should be the multiple use of Federal lands consistent with the preservation and protection of our Nation's resources.

At present, almost two-thirds of all public lands have been withdrawn for single-purpose use, primarily the preservation of wilderness. It seems inconsistent for some to decry our country's increasing energy dependence on foreign imports, and yet, at the same time, to continue restricting the development of more and more of our Federal lands. Why, for example, do we continue to so severely restrict the discovery and mining of valuable minerals or energy resources available to use within the United States?

*Legislative History at 670.*

Congress assumed that Section 204 embraces the MLA when it ordered the Interior Secretary on several occasions to issue emergency withdrawals. *Pacific Legal Foundation v. Watt*, 529 F. Supp. 982 (D. Mont. 1981), modified, 539 F. Supp. 1194 (D. Mont. 1982) (withdrawing public land in Montana); *National Wildlife Federation v. Watt*, 571 F. Supp. 1145 (D. D.C. 1983) (upholding enforcement of congressional direction to withdraw public land in North Dakota from coal leasing); Coggins, Wilkinson, *Leshy Federal Public Land and Resources Law*, (Foundation Press 3<sup>rd</sup> ed. 1993) p. 302 (detailing House Interior Committee direction to withdraw public lands under Section 204(e) (emergency withdrawals).

C.E.B ROOKS & ASSOCIATES, P.C.

Sublette County, Sublette County Conservation District  
April 7, 2006  
Page 4

### Historical Background

The history and background of withdrawal reform effected in FLPMA explain not only the reason that Section 204 clearly applies to mineral leasing but also the reason that BLM cannot meet its mandate of public comment and balancing competing public land uses without following the withdrawal procedures.

Before enactment of FLPMA, much of the public lands were withdrawn from the mineral leasing laws under the Pickett Act of 1910, which imposed no practical limitations on the President's authority to close public lands to mineral development. Wheatley, *C, A Study of Withdrawals and Reservations, Public Domain Lands*, pp. vii, 491-525 (PLLRC 1969).<sup>2</sup> The power to withdraw public lands was originally recognized as part of the President's implied withdrawal power. *United States v. Midwest Oil Co.*, 236 U.S. 459 (1915) (holding that the President had implied power to close the public lands to mineral development since Congress had acquiesced for many years when the President exercised such authority). Congress enacted the Pickett Act of 1910, 43 U.S.C. § 141 (repealed Pub. L. 94-579 Oct. 21, 1976), to grant the President power to withdraw public land, so long as it was temporary and did not apply to metalliferous metals. The term temporary became meaningless since DOI rarely reconsidered withdrawals and classifications. Wheatley at 129-130. Once withdrawals and classifications were made, the public lands remained withdrawn even when the majority of the withdrawals and classifications were no longer needed. *One-Third of the Nation's Land* at 52.

The PLLRC recommended a complete overhaul of public land classifications and withdrawals, because, as of 1971, more than 78% of the public lands were closed to mineral development. The PLLRC concluded that "Congress [should] assert its constitutional authority by enacting legislation reserving unto itself exclusive authority to withdraw or otherwise set aside public lands for specified limited purpose uses and delineating specific delegation of authority to the Executive as to the types of withdrawals and set asides that may be effected without legislative action." *Id.* at 2. As part of the overhaul, the PLLRC recommended that Congress adopt uniform standards and procedures to close public land to mineral development and that all withdrawals would be periodically reviewed and revoked.

Section 204 provisions establishing and limiting the Secretary's withdrawal authority reflect PLLRC's concern that the Executive Branch had arbitrarily closed federal land to mineral use. *Id.* at 52-53; *Legislative History at 670*. The PLLRC criticized the haphazard and unnecessary use of withdrawals and classifications that affected virtually all of the public domain and recommended

In his exhaustive report to the PLLRC, Charles Wheatley documented the problems concerning withdrawals, land classifications, and other segregative land policies. Wheatley at 34-44a.

## Appendix B – Public Response Documents

C.EB ROOKS & ASSOCIATES, P.C.

Sublette County, Sublette County Conservation District  
April 7, 2006  
Page 5

limiting the Secretary's withdrawal authority and requiring the Secretary to review existing withdrawals. *One-Third of the Nation's Land*, at 51 -52.

In addition to enacting Section 204, Congress abolished the Executive Branch's implied power, including that of the Secretary, to withdraw land. Congress also took the unusual step of identifying the judicial decision it sought to reverse.

The main authority used by the Executive to make withdrawals is the "implied" authority of the President recognized by the Supreme Court in *U.S. v. Midwest Oil Co.* (236 U.S. 459). The bill would repeal this authority and, with certain exceptions, all identified withdrawal authority granted to the President or the Secretary of the Interior . . . The bill substitutes a general grant of authority to the Secretary of the Interior to make and modify withdrawals subject to certain procedural requirements.

*Legislative History* at 459.

### Litigation Positions

Congress' exercise of control and review over public land decisions has consistently met with resistance at the BLM. BLM strongly resisted the argument that withdrawal review and revocation required public comment. *Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990) (dismissed for lack of standing). NWF tried to set aside more than 1000 withdrawals and land classifications on the basis that BLM had not had public comment or NEPA review before opening these lands to mineral development (including mineral leasing). As explained above, in 1968, more than 75% of the public lands were closed to at least one class of development and the patchwork of classifications and withdrawals made title work and land uses very difficult. Unfortunately, after the initial push in 1982, BLM has largely abandoned withdrawal review and revocation; nor is it being done in the current RMPs.

The Wyoming district court has twice concluded that Forest Service leasing moratoria, which were enforced by BLM, must comply with Section 204 procedures. *Mountain States Legal Foundation v. Andrus*, 499 F. Supp. 383 (D. Wyo 1980) ("*MSLF I*") (deferring action on mineral lease applications pending RARE II violated §204); and *Mountain States Legal Foundation v. Hodel*, 668 F. Supp. 1466 (D. Wyo. 1987) ("*MSLF II*") (deferring mineral lease applications pending completion of EIS and land use plans violated Section 204). The United States never appealed either decision and instead proceeded to process the pending lease applications.

The Interior Board of Land Appeals concurs and explains that the Secretary's discretion under the MLA to refuse to issue oil and gas leases is exercised "both on an ad hoc basis, in response to specific lease offers, or more formally through his general authority to withdraw land from mineral

C. E. BROOKS & ASSOCIATES, P.C.

Sublette County, Sublette County Conservation District  
April 7, 2006  
Page 6

leasing." Outside of these procedures, "de facto" mineral leasing withdrawals may not be effected. *Clayton W. Williams*, 103 IBLA 192, 206 (1988) (citing *Andrus and Hodel*).

### BLM Director Policy

In 2006, the BLM Director issued guidance which clearly shows that BLM may not use the RMP to preclude oil and gas leasing and development, rather than follow the withdrawal procedures set out in FLPMA: "Except for Congressional withdrawals, public lands shall remain open and available for mineral exploration and development unless withdrawal or other administrative actions are clearly justified in the national interest in accordance with the Department of the Interior Land Withdrawal Manual 603 DM 1, and the BLM regulations at 43 C.F.R. 2310." BLM Energy and Non-Energy Mineral Policy (April 21, 2006).

BLM formally adopted this policy through M 2006-197. BLM, therefore, must comply with the 2006 policy, which conditions the closure of lands available to mineral exploration and development on following FLPMA's withdrawal procedures.<sup>3</sup>

### Resolution

The above decisions and policy teach us that BLM can deny a nomination for a specific lease under the MLA but when it decides to close specific areas of land to mineral leasing, BLM must comply with Section 204 of FLPMA. This is the only way to reconcile FLPMA, its history and background and the case law.

In recent years, BLM has relied on the *Bob Marshall Alliance* decision to conclude that it can defer public land for oil and gas leasing in the land use plan. *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1229-30 (9<sup>th</sup> Cir. 1988), *cert denied*, 489 U.S. 1066 (1989). This position fails to appreciate the differences between the *Bob Marshall Alliance* case which involved a single lease decision, and the *MLSF* cases which involved either roadless areas being studied for wilderness review or entire national forests. *Id.* at 1230 ("Thus refusing to issue the Deep Creek leases, far from removing Deep Creek from the operation of the mineral leasing law, would constitute a legitimate exercise of the discretion granted to the Interior Secretary under that statute.")

The Wyoming RMPs fit squarely within the facts found in the *MLSF* cases and the management decision process is quite different from a withdrawal, because it omits Secretarial review. In addition, there is no professional mineral report, estimate of economic impacts or

<sup>3</sup> Terms and direction in manuals and instruction memoranda are binding on BLM employees. *Robert Glenn*, 124 IBLA 104, 108 (1992); *Ellis Ferguson*, 69 IBLA 352 n.2 (1983).

## Appendix B – Public Response Documents

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C. E. BROOKS & ASSOCIATES, P. C.

Sublette County, Sublette County Conservation District  
April 7, 2006  
Page 7

evaluation of the impacts on adjacent private land, to name a few differences. Most important, the closures are not recorded on the BLM plat books while withdrawals are.

The RMP does not address all of the required elements in a Section 204 report. It fails to document the impacts on private and state lands, existing leases, and most importantly fails to show that closing this land is necessary to protect elk habitat. Elk, unlike the northern spotted owl or the red cockaded woodpecker, is at all time high in terms of populations and distribution. There is no evidence that oil and gas development would cause those numbers to drop in any significant level. Instead, the "resource reason" is really to accommodate the hunting license tags sold by WGFD. This is not the resource protection reason envisioned by Congress so employed in the past.

Similarly, the closure has more adverse effects on current land uses, is opposed by local governments and landowners, and cannot be justified on the basis of other competing resource policies. In short, the Zone 3 and Zone 2 closures when viewed under the criteria in Section 204 cannot be supported.

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